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COMMISSIONER KERR

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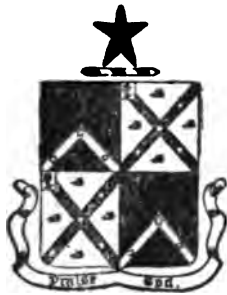
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COMMISSIONER KERR—

AN INDIVIDUALITY

BY

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PREFATORY REMARKS

BY the title "Commissioner Kerr—an Individuality," the writer seeks to convey, in the fewest possible words, the impression of the late Commissioner's strong personal characteristics, of which those cited in the five words on the title-page were the most dominant. He was above all things *Vir justus et propositi tenax*.

This Memorial is an attempt to place before the world the chief incidents and turning-points in the career of a man whose *obiter dicta* were, for nearly half-a-century, household words throughout the country; and will, it is hoped, lead to a juster and more generous appreciation of his life and work as a whole than he obtained when living.

The writer has, in the preparation of the work, been indebted for much valuable aid, to the Town Clerk of London, to the officials of the City of London Court, to Mr. A. E. Nelson, a well-known member of the Bar who practised there largely in Admiralty, to Mr. George Kebbell, a solicitor, and a friend of the late Commissioner, to the Rev. Vincent Borradaile, of St. Mary's, Munster Square, to a

See my bookshop - 12 March, 1915

Prefatory Remarks

member of the congregation of that church, and also to Mr. Grover, shorthand writer at the Court, and long private secretary to the Commissioner. Where considerations of space so allow, the contemporary words of others, especially of *The City Press*, are given *verbatim*, that the writer may be absolved from any suspicion of unduly friendly bias.

G. P.-L.

TEMPLE, *June*, 1903.

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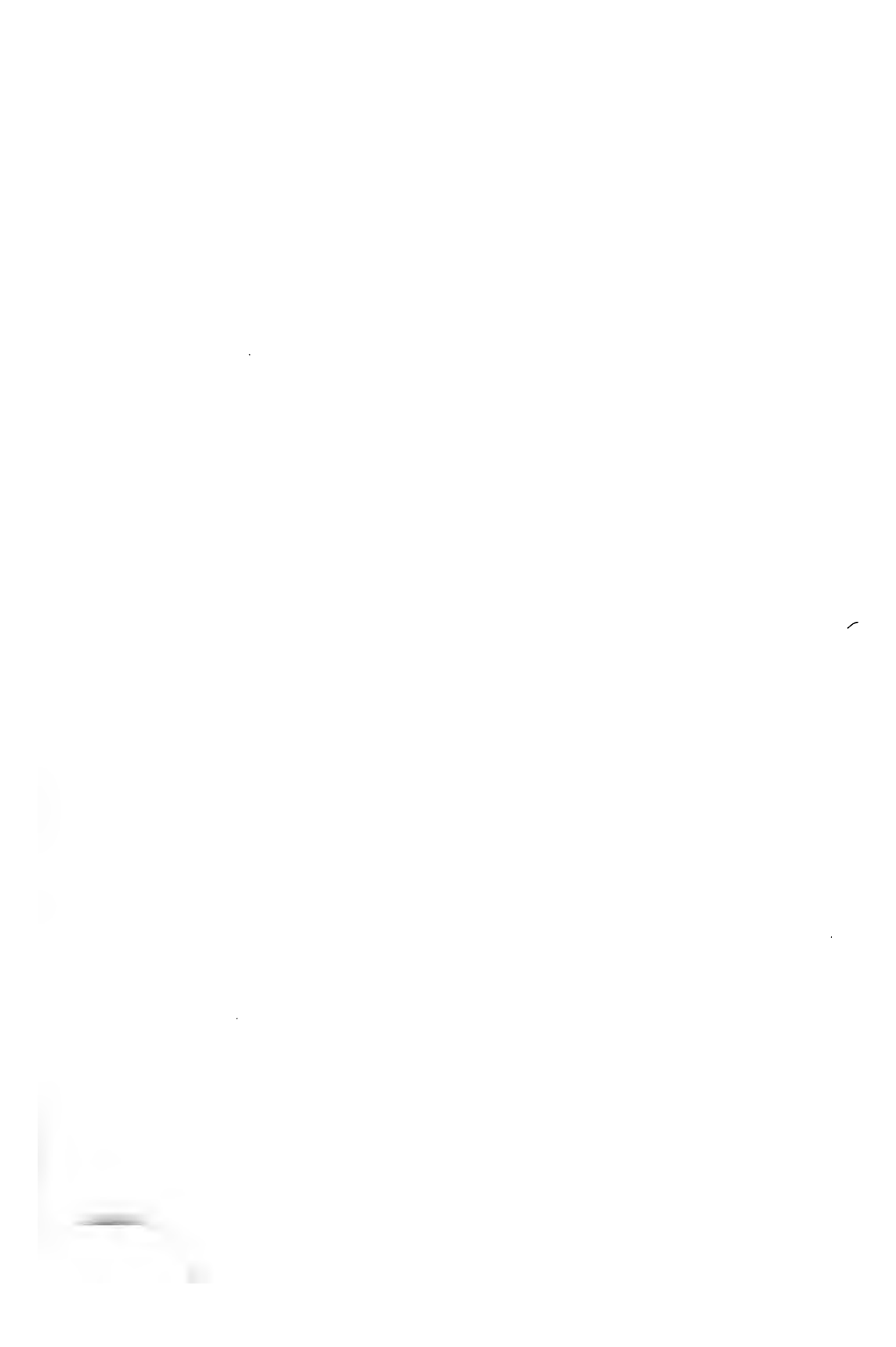
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Painted by his son, Charles Kerr, 1864.	



CHAPTER I.

ROBERT MALCOLM KERR'S BIRTH, FAMILY, EDUCATION—
CALL TO SCOTCH BAR—EARLY YEARS THERE—AND
EXTENDED "GRAND TOUR."

ROBERT MALCOLM KERR, in 'after life, for many years, known to every one as "Mr. Commissioner Kerr," was born at Saint Mungo, Glasgow, on June 5, 1821. His father, Mr. John Kerr, was a Writer to the Signet (a Scotch term for solicitor) and also Commissary Depute for Hamilton and Campsie. He clearly was one of those energetic, hard-headed, and hard-working men who had laboured, for years previously, to obtain those political and municipal reforms effected just before the accession of the late Queen Victoria, in the eventful period between the years 1829-40, which saw so many political changes consummated. Some of these workers were under the belief that they were Conservatives. Mr. John Kerr, W. S. of Glasgow, had no such delusion. He was one of the earliest members of the Reform Club, and of considerable local celebrity in Glasgow.

In the *Glasgow Herald* (May 6, 1890), John Kerr was described as having been, at one time, a prominent member of a local literary coterie there which, in the early days of the century, exercised itself in the cause

Commissioner Kerr

of municipal and political reform. This body formed a "Sma Weft Club," and, after the fashion of the day, published a book of thirteen "pieces." These were satires against the system of borough and municipal administration then prevailing in Glasgow, and attacked many of the then Glasgow citizens and Corporation officers under such uncouth pseudonyms as "Fozie," "Blueskin," "Sour-Ploom," and the like. The only copy of the "Noctes Sma Weftianae" in existence describes them as "published by the printer of this title-page, the ingenious Typographer John Carfrae Malcolm, No. 28, Nelson Street, 1849." It is still of much local historical interest, and was accordingly presented by the Commissioner to the Mitchell Library at Glasgow. This John Kerr was, among other things, an active election agent. He was interested in the elections for Dumbartonshire, Lanarkshire, and his own native county of Ayr. He also acted as agent for the late Mr. Pleydell Bouverie during the whole time that gentleman sat as M.P. for the Kilmarnock Boroughs.

The future Commissioner's father came of the ancient family of "Kerr of Kerrsland in ye shire of Ayr," which claims to have been settled in Ayrshire before the date of the Norman Conquest. One branch of it is now represented by the Duke of Roxburgh, and another by the Marquis of Downshire. When, in April 1891, the Commissioner was invited to have his armorial bearings placed within the Court buildings, he erected in stained glass in a window in the City of London Court the family arms, as cut on a stone over the entrance door to the

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present House of Kersland in 1604, by one Daniel Ker—whose initial it bears (engraved *Kerr of Kerrisland*, p. 28). A stone with the same arms cut upon it was once over the door of the garden wall at the ancient residence of the Kerrs. These arms with the “difference” that the “chevron” is “cottised” were re-granted by Lyon King-at-Arms (the Herald for Scotland) to John Kerr, the father, with the addition of a crest and motto. As re-granted they are described in heraldic language as “quarterly, first and fourth gules, on a chevron ‘cotticed’ argent, three mullets of the first” (for Ker), “second and third argent, on a Saltire azure, between four bears’ heads erased gules; five mullets of the first (for Malcolm), a Canton of the third, gutte d’eau, thereon a lion rampant, double qued of the field (for Monfode of that Ilk).” To these are added, “an appropriate helmet and a mantling, Gules, doubled argent;” while, on a wreath of the bearer’s liveries, is a crest, viz., a mullet as in the arms, and, in an escrol over the same, the motto “Praise God.” The arms, as re-granted, introduce and allude to the descent of the Kerrs of Kersland from “Monfode of that Ilk.” This can be traced clearly enough, but it is extremely intricate and difficult to state exactly and concisely what this family connection was, a Scotch pedigree, such as this, being more difficult to follow than even a Cornish one. A scion of the Monfode family, one Simon de Montfort, centuries ago “invented” our English House of Commons, and the Commissioner was proud of being even remotely connected with so famous a man.

A family tradition says that, in the reign of

Commissioner Kerr

Charles II., some member of the Commissioner's branch of the family of Kerr of Kerrsland was created a baronet. The present writer, though he has peculiar facilities for doing so, in consequence of being the Senior Honorary Counsel to the Society of Baronetage, has never, however, been able to find any trace of such a creation.

Commissioner Kerr's pride in his family was not based on that mere empty vanity which leads the possessor of nothing save a long pedigree to boast that he is "the tenth transmitter of a" mere name, or perhaps of even some commonplace feature. He firmly believed in the teachings of modern science as to heredity. These tell us that mental attributes, as well as physical features, are often mysteriously transmitted to even the remote descendants of a man of strongly marked character. Pride in mere long descent he would have scorned: lineal descent from men of great mental attainments he valued.

Innumerable were the gifts made by him to churches and public libraries, which he believed to have been, however remotely, connected with those ancestors. Amongst them there appears to have been a certain sturdy Scotch Covenanter of the name of Robert Kerr of Kerrsland, who does not fill any prominent place in Scotch histories, and is not mentioned in the Dictionary of National Biography. But the Commissioner found out all about this bearer of the family name, and believed him to have been an ancestor, though he always felt unable to assert positively that this was one beyond doubt. He accordingly, in 1891, by leave of the proper authorities,

His Early Days

erected a memorial brass in the parish Kirk of Dalry to the memory of this Covenanter, and also placed a similar Brass in one of the windows of the south wall of the north transept of Utrecht Cathedral. These Brasses bore the following inscription :—

Ut Exemplum
Roberti Kerr de Kerrslande
qui, Religionis causa
Exsulans
apud Rheni Trajectum Mortuus est
A.D. XVIII. Kal. Dec. A. S. MDCLXXX.
Ad memoriam posteritatemque,
Hoc Monumentum.
Ducentis Annis exinde jam exactis,
P. C.
Robertus W. Kerr
(Dominis et, ut sperat, abitaë Constantiæ non
omnino non heres)
In Civitate Londinensi Index.*

Of this Covenanter himself, the Commissioner's book, *Kerr of Kerrisland* has (at p. v. of the Addenda et Corrigenda) the memorandum following: "Although the memory of the Covenanter is venerated in the valley of the Garnock there was, for two centuries, no monument to him of any kind, either in the locality of his birth, or in the city where he died an exile. This want has now been supplied. In one of the arches of the south wall of the north transept of the Cathedral of Utrecht, and in the Parish Kirk of Dalry, brass tablets have been erected bearing the inscription" set out above.

* Fearing lest any rendering of his own should be unconsciously warped by his knowledge of what Commissioner Kerr probably

Commissioner Kerr

The above extract, taken in conjunction with the inscription on the Brass to the effect that "religionis causa" the Covenanter "Exsulans apud Rheni Trajectum Mortuus est," sufficiently explains why Utrecht Cathedral was selected as one of the sites for the Brasses. Moreover, a close connection is known to have existed between the Scotch Covenanters and the Dutch Protestants. This *Robert Kerr* of Kerrsland, who was the object of the late Commissioner's respect and admiration, must not be confounded with the *John Kerr* of Kerrsland, who is mentioned

desired to express, viz., admiration for his ancestor's "*Constantiae*" without sympathy with his religion, the author has become indebted to Mr. John Hutchinson, the Librarian of the Middle Temple, who did not know Kerr, for the subjoined translations:—

Literatim et verbatim rendering :—

That the Example
Of Robert Kerr of Kerrslande
Who, in the cause of Religion,
In Exile,
At Utrecht, departed this life,
the 15 Dec. A.D. 1680,
To memory and posterity it might hand down;
This Monument,
After the lapse of two hundred years,
Has erected Robert M. Kerr,
(Of his name, and, as he hopes, of his old-world
Constancy in some measure the inheritor)
Judge in the City of London.

Freely translated :—

That it may hand down to posterity and to the remembrance of mankind the example of Robert Kerr of Kerrslande, who, in the cause of religion, died in exile at Utrecht the 15th of December, in the year of our Redemption 1680, Robert M. Kerr, Judge in the City of London (the inheritor of his name, and, as he hopes, in some measure of his old-world independence of character) has caused, after the lapse of two hundred years, this monument to be erected.

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in Scotch history (see, for instance, Burton's History of Scotland) as having been among the Covenanters but not of them, and to have, to speak plainly, played the part of a treacherous spy. A member of the family, in writing to thank the Commissioner for erecting a monument for "their mutual ancestor," spoke of this "Robert Kerr" of Kerrsland as "a man to whose memory not only his descendants, but the whole Church of Scotland, owes the deepest respect." He added that "in the old churchyard adjoining lie the remains of another Robert Kerr of Kerrsland, who was my great-grandfather, and besides him his descendants for two generations."

Family affection, an admiration for sturdy independence however shown, and a naturally deep and sincere religious feeling, no doubt united to create in the late Commissioner's mind a respect for the Covenanter to whose memory he erected those Brasses. But he himself possessed a breadth of mind which would have naturally had little sympathy with the Covenanters. They, as a sect, were (see Blunt's Dictionary of Ecclesiastical Sects) austere, narrow, and bigoted. The late Commissioner himself, while taking the broadest and most charitable views of the religious opinions of every one, personally had leanings to ritualistic and "High Church" or "Catholic" views. He was, at one period of life, a regular attendant at St. Mary Magdalene's, Munster Square, well known then as one of the most "advanced" of London churches; and he was also an attached personal friend of the Rev. Mr. Stuart, the Vicar.¹ The words

¹ See as to this *post*, Chap. X.

Commissioner Kerr

"Nominis et, ut sperat, vitæ constantiæ non omnino non hæres," which he caused to be placed upon the Brass, were doubtless intended to adroitly convey that it was the name and the independent character of the Covenanter which attracted the Commissioner's admiration, rather than any sympathy with his ancestor's religious views.

But it is now time to return to our sketch of the family of the late Commissioner. So let it be at once resumed.

John Kerr, the father of the future Commissioner, a scion of the Kerrs of Kerrsland, a slight sketch of whose public career has just been given, commenced early in life to practice at Glasgow as a writer. He in 1818, or thereabouts, took as a partner one Alexander Malcolm, one of the two sons of an older Alexander Malcolm, a ne'er-do-weel merchant who, after running through most of the fortune brought to him by his wife (previously a Miss Steele), had embarked at Glasgow in the book trade with the remnant of it. This grandfather, Alexander Malcolm, had died at forty-one, leaving an eldest son named Robert, and the son Alexander who in 1818 became John Kerr's partner, together with some daughters, the second of whom was named Elizabeth. Mr. John Kerr had at that time either already become acquainted with Elizabeth Malcolm, or her brother being taken into partnership was the cause of his becoming so—it is not very material which. At any rate he, in 1820, being then about twenty-seven years of age, was married to Elizabeth Malcolm, his partner's sister. The residence of Mr. John Kerr was at Frisky Hall

His Early Days

(a supposed corruption of Frescoe Hall), a place on the Clyde, mentioned by Dibdin in his *Tour in Scotland*. This John Kerr, the Commissioner's father, survived until February, 1881, when he died at the almost patriarchal age of ninety. He had continued to exercise his judicial duties up to the time of his death. His portrait, painted in oils by Bewick in 1824, was afterwards engraved. Copies of the engraving were presented by the late Commissioner to the British Museum, the National Gallery, the Guildhall Library, and to the Dean and Council of the Faculty of Advocates at Glasgow.

The family of Malcolm, into which John Kerr married, possessed very considerable literary ability. The elder of his wife's brothers, and consequently the maternal uncle of the late Commissioner, was, as has been seen, one Robert Malcolm. He, in the very year (1821) in which his sister gave birth to the future Commissioner, superintended an edition of Goldsmith's works (published in 1816), and wrote a memoir of their author. It was the first good edition of those works that had appeared. Some four or five years later (in 1824), it was acknowledged as such, and adopted and republished by Washington Irving. A copy of this early and now rare edition of Goldsmith's was in January, 1900, presented by the Commissioner to the John Rylands Library at Manchester. Robert Malcolm, too, was the first to draw attention to the merits of the poet Burns, and to suggest a national memorial to him. About four years after the birth of the Commissioner, viz., about 1825, Malcolm became the proprietor and editor of a high-class Glasgow paper

Commissioner Kerr

called *The Scotch Times*, which for many years was the fearless advocate of municipal reforms, now long since carried out in Glasgow. A crayon portrait of this Robert Malcolm was taken in 1824, and after his death was engraved, numerous copies of the engraving being then distributed amongst friends.

Alexander Malcolm, the brother of the Commissioner's mother, Mrs. Kerr, who had become Mr. John Kerr's partner, fell into bad health, and had to abandon the legal profession. He seems to have taken to literary pursuits as far as health allowed him. Subsequently to his breakdown he, while travelling in search of health, wrote a series of very interesting letters to his family at home, which the Commissioner collected in a volume which he edited, and printed for private circulation under the title of *The Letters of an Invalid during Three Years' Tour in pursuit of Health*. Like his brother Robert, Alexander also had his portrait taken by Bewick in crayon in 1824. In 1880, this, too, was engraved, and a copy presented by the late Commissioner to the Faculty of Procurators of Glasgow.

Robert Malcolm Kerr was the first child of the marriage of John Kerr with Miss Elizabeth Malcolm, the literary history of whose two brothers has just been sketched. The early education of the future Judge and Commissioner was received at a then well-known "Academy" at Tillicoultry, kept by the Rev. Archibald Browning. It was continued at Glasgow University, and was completed in France. When he had arrived at a sufficient age—and a University education was at that time entered upon

His Early Days

and completed at an earlier age than it is now—he proceeded to Glasgow University. He must have been only about thirteen at the time he went to the University. It was there that he appears to have shown the first signs of that great ability and industry which distinguished him in after life. For preserved amongst his papers are two certificates. One is as to his having attended the “Junior Humanity Class” of the University during the Session 1833–4, and the “Senior Humanity Class” in the following session; and it certifies that he gave his attendance “with perfect regularity,” that he “was examined” not fewer than thirty times in the two sessions, that “he was questioned almost daily,” and that he “acquitted himself much to the satisfaction” of the examiners, while his behaviour is said to have been “perfectly decorous” and his “general conduct unexceptional.” The other certificate is in respect of his studies in “the Greek class,” and is also satisfactory. Indeed, such was his reputation at College that long afterwards, in the year 1857, before he had become a City Judge, or generally known by his edition of Blackstone, his old University bestowed on him the distinction of the degree of LL.D.

In all probability it was on the termination of his University course that Robert Malcolm Kerr went to France and completed his education. That he at some time did this is mentioned by himself in the book which he compiled about his family (see *Kerrsland*, at p. 102). Pretty good evidence of his having had a continental education is furnished by the episode, which will be mentioned later, of his trying a case at

Commissioner Kerr

his Court wholly in French. As he went to Glasgow University at the early age of thirteen, it is clear that he could not have travelled abroad previously. We can trace nothing of him save when he took the "Grand Tour" in 1846-7, during the years which elapsed between his leaving the University and his call to the Scotch Bar in 1848, when he must have been twenty-seven years of age. This affords further reason for supposing that the period between leaving Glasgow and his taking the "Grand Tour" in 1846-7 must have been the period when he was upon the Continent to complete his education.

We have it on the authority of the late Commissioner himself that it was usual for students for the Scotch Bar to proceed "to Edinburgh in order to acquire a knowledge of the practice of the Supreme Courts, attending the Lectures on Scots Law, and in conveyancing at the University of Edinburgh." In all probability therefore, after leaving Glasgow University and spending some time abroad, Kerr returned to Edinburgh, and there followed the course generally taken by students.

The result of his sojourn in France was that the Commissioner remained throughout life an accomplished French scholar, delighting in reading French novels and in seeing French plays in the moments when he allowed himself to indulge in such light recreations. While abroad he also acquired some knowledge of both Italian and German, though he never became such a master of those languages as he was of French.

A student, before he can be called to the Bar in

His Early Days

Scotland, must make a declaration that he has been engaged in no "employment" during the twelve months immediately preceding his call. This wise provision, if extended to England, would at once get rid of many nice questions which the Benchers of our English Inns of Court are perpetually called on to deal with, by saying whether the occupation in which a man has been previously engaged is such as is consistent with his being called to the Bar. In old days, when it was the fashion for a gentleman to complete his education by performing "the Grand Tour" of Europe, it was usually undertaken during the twelve months of enforced idleness which, in Scotland, always necessarily preceded a call to the Bar. Kerr having so recently finished his education on the Continent, probably did not take it then; but we know that later on he did so. His life between completing his education on the Continent and his call to the Scotch Bar was probably spent as mentioned on the previous page.

His terms having been completed, Robert Malcolm Kerr was in 1843 called in due form to the Scotch Bar. The certificate of his "call" to the Scotch Bar is preserved amongst his papers. It runs as follows:—

1842

At Edinburgh the Eighteenth day of February One thousand eight hundred and forty-three years These do certify all whom it may concern That Mr. Robert Malcolm Kerr as Advocate did the day above mentioned compear^{*} in the Court of Session and in open Court qualify by taking the Oaths appointed by Law and by subscribing the same and the assurance.

WILLM. DRYSDALE

Assistant Clerk of Session.

* "Compear" is defined as "In Scots Law, to appear in Court personally, or by Counsel."

Commissioner Kerr

No details as to where Kerr practised, and what he did while a member of the Scotch Bar, are anywhere recorded. That he enjoyed some practice, and showed ability in the conduct of the cases which he had obtained, is accidentally shown by a notice in a contemporary newspaper, set out in full on a later page (*post* p. 18), which speaks of his having "distinguished himself on various occasions in the Circuit Courts of Glasgow, and the neighbouring cities, as well as in our Ecclesiastical Courts." It further remarks that his appearances in the Scotch Courts seem to promise distinction for him.

Kerr, not having taken the usual "Grand Tour" previously to his call to the Scotch Bar, did so in 1846-7. At Rome he was presented to the then Pope Gregory XVI. He extended the usual tour by visiting Egypt and the Holy Land. The family possess many relics of these travels, amongst which is a walking stick made from a cedar of Lebanon. Many objects of curiosity and antiquity were, in later life, presented by the Commissioner to various Museums and Libraries. He in August, 1876, presented to the Guildhall Library "Two Egyptian Jars found in a Tomb near Karnak in 1845."

CHAPTER II.

KERR EMIGRATES TO ENGLAND—IS CALLED TO THE
ENGLISH BAR—MARRIES A DAUGHTER OF CHARLES
KNIGHT.

NOT many years after his call to the Bar of his native country Robert Malcolm Kerr, like many another ambitious young Irishman or Scotchman, began to turn his eyes to England as the promised land. After a while he determined to become an English barrister. With this end indeed he had proceeded to London and had entered himself as a student of Lincoln's Inn, before taking the extended "Grand Tour" in 1846-7, which is mentioned in the previous chapter, and must at that time have been still formally "keeping his term" for the English Bar. Before being called to it he in ordinary course became a pupil in chambers. The system of "pupilising" was then at its height. This consisted in young men intended for the Bar going to "read" for a time as a pupil in the chambers of some member of the Bar, certificated conveyancer, or special pleader of eminence, so as to there thoroughly learn that branch of the profession to which they afterwards intended to devote

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their lives. This practice was originated by a famous lawyer, who was at first a Special Pleader, but was afterwards called to the Bar and became Mr. Justice Buller, being created a judge in 1778, and made a baronet in 1790. His plan of teaching law produced some of the greatest lawyers this country has ever seen. Obviously, in any system of legal education, it is necessary that those who propose to practise at the Bar should be both thoroughly taught the practical side of the law and also well trained as well in the art of advocacy—as neither the last-named art nor a practical knowledge of the law can be obtained merely from books. In very old days students for the Bar gained their practical knowledge of the law by entering as students in some Inn of Chancery,¹ and there for a time serving practically as apprentices to the solicitors who dwelt there, until they were considered sufficiently proficient to enter an Inn of Court. A knowledge of the art of advocacy was obtained by such students by “moots” or discussions in their Inns of Chancery and of Court; and afterwards by attendance at the Courts during the interval which used to be interposed between a call to the Bar at an Inn of Court and a call to the Bar in the King’s Court. The pupilising system practically taught them simultaneously a knowledge both of Law and of Advocacy. The method of legal education now in fashion makes no provision for a student gaining any practical knowledge before his call to the Bar, and leaves him to acquire it afterwards (largely

¹ See further as to this *post*, Chap. X.

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in County Courts) at the expense of his early clients and of County Court judges who are obliged to listen to him. Mr. Commissioner Kerr was, in after life, never tired of pointing this out. In whose chambers Robert Malcolm Kerr first became a pupil is well known. On his becoming, in 1850, a candidate for the office of Common Pleader, a Mr. S. F. T. Wilde, who had originally practised as a Conveyancer at Serjeant's Inn, had been subsequently called to the Bar, and was in his prime when Kerr came to London in the forties, in March, 1850, writes of his knowledge of the latter, "during the time you were in my chambers, and since you left them." About the same date Mr. G. Tarrant Harrison, a certificated Special Pleader of that day, speaks of Kerr's conduct "while you were with me as a pupil and since." Kerr therefore clearly appears to have been a pupil of both these gentlemen—probably first with Mr. Wilde the conveyancer, and afterwards with Mr. Tarrant Harrison the pleader. Moreover, the last named had at that time in his chambers a lad of the name of George Mitchell. Some few years later Kerr, having become Judge of the Sheriff's Court of London, and always anxious to do justice to a deserving friend whom he considered to merit it, got this lad, who had meanwhile risen to the position of a barrister's clerk, an appointment in the Registrar's Office at the Court. Mr. George Mitchell, the respected clerk to the Registrar, thus rose to his present position under Kerr's auspices. He remained with his old patron until the latter's retirement in 1901; and while the latter served the City for over

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forty years, Mr. Mitchell has been an officer of the City of London Court for nearly that time.

A now almost forgotten Mr. Harrison, who, from his initials, was some years ago known to the Bar as "Alphabet" Harrison, used for more than a quarter of a century to frequently sit as the late Commissioner's deputy. He must not be confused with the Commissioner's old master. His name was O. B. C. (Octavius Baxter Cameron) Harrison, but he was a son of one John Orton Harrison, and not (as has been sometimes erroneously supposed) a son of the Commissioner's old master in the Law. He was well known to lawyers, having been one of the authors of *Harrison and Rutherford's Reports*, and the author of a book on *The Practice of the Sheriff's Court*.

In Hilary Term (January), 1848, the name of "Robert Malcolm Kerr" appears amongst those of "Gentlemen called to the Bar" by Lincoln's Inn in that term. A notice of Kerr's call to the English Bar was contained in the *Glasgow Herald* as follows:—

ENGLISH BAR.—In the *Globe* of Friday last we observe that among several gentlemen called to the Bar by the Hon. Society of Lincoln's Inn is one of our townsmen, Robert Malcolm Kerr, Esq., who was admitted a few years ago a member of the Scottish Bar, and distinguished himself on several occasions in the Circuit Courts of Glasgow and the neighbouring counties, as well as in our Ecclesiastical Courts. We shall be glad to learn that in the wider field of labour he has chosen to attain the distinction which his appearance in our Scottish Courts seemed to entitle him to claim.

About ten years after his call Kerr, for the purpose of more readily obtaining Chambers in the Temple, was admitted *ad eundem* as a barrister at the Middle

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Temple, like his friend the late Lord Russell of Killowen, who did precisely what Kerr had done before him. Both doubtless had alike found that it is inconvenient to a member of the Common Law Bar not to have Chambers in the Temple, and access to a library to one of the Inns of Court which lies near. Unlike Lord Russell, however, Kerr, after his admission to it, always regarded the Middle Temple as now his "Alma Mater" in the Law, and at one period would have liked to become a Bencher there. When, in 1899, Mr. Macrory, K.C., was treasurer, the Commissioner, having largely distributed his objects of interest among museums and libraries, though he himself would not have cared at that time for the honour of being a Bencher, but finding that the writer possessed that distinction, through him, presented to the Bench of the Middle Temple a most interesting collection of photographs of past legal celebrities, most of whom had been his personal friends. He was formally thanked for doing this by a resolution of the Benchers, which was communicated to him by the Sub-Treasurer.

The same year as saw Kerr's call to the Bar also, within about six months afterwards, saw his marriage. With his father's many political friends, and also the numerous literary ones of his mother's family, we may be sure that the young Scotch barrister had not been allowed to come to London without plenty of introductions. Amongst others to whom he had introductions was the well-known philanthropist and reformer, the late Matthew Davenport Hill, Recorder of Birmingham. Hill was a frequent correspondent and a

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political friend of Mr. John Kerr, the father of the late Commissioner ; and numerous letters from him are amongst the letters and correspondence, of which a list is given in *Kerr of Kerrsland*. Matthew Davenport Hill had, too, says the Commissioner, assisted in obtaining for the city of Glasgow the very best representative in Parliament it ever had, the late Lord William Bentinck. That an introduction to Matthew Davenport Hill was not only given, but was used, is evident from the fact that when, two years after his call to the English Bar, Kerr became a candidate for the office of a Common Pleader in the City, and his only testimonials were from Hill and from the two masters with whom he had read as a pupil, the Recorder of Birmingham was then able to say of him, "I have known you long." This testimonial is set out in full later on (p. 28 *post*). It is dated from 44, Chancery Lane, in March, 1850, and not only expressly says that the writer has known Kerr long, but implies that he or his has known him pretty well, since it declares that he feels "assured that you will fill the duties of the appointment with credit to yourself and satisfaction to every member of the Corporation who may have been induced to give you his vote."

Matthew Davenport Hill was like Mr. John Kerr, one of the earliest members of the Reform Club. So also was the late well-known Charles Knight, at that time one of the best known literary men of the day. Knight was alike an author, an editor, and himself a publisher. He was the "Knight" whom Douglas Jerrold, on quitting one evening, wittily referred to as "Good Knight." Hill had assisted him

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in his literary labours, and it was Knight who, on Hill's death, wrote the latter's obituary notice. The ways in which Knight was connected with literature are so many that it is not entirely easy to say of what works he was the author, of what editor, and of what publisher. His earliest literary work had been a remarkable one. He was the son of a bookseller and local newspaper proprietor at Windsor, who had been mayor of that town. A relative by whom Charles Knight had been largely brought up, and from whom he doubtless derived literary and classical tastes, was the Rev. James Hampton (1778), a Yorkshire rector known to scholars as the first translator of Polybius, his translation of which went through no less than six editions. Charles Knight's father, a Windsor bookseller, had once "picked up" at an auction an imperfect copy of the comparatively rare *First Folio* of Shakespeare. Young Charles Knight restored it by printing the missing pages with type of seventeenth century character on the fly-leaves of seventeenth century books, so that both type and paper matched the rest of the folio. Not only did the restored work sell for a good sum, but what is more important, his success attracted Charles Knight to undertake more literary work. He, at subsequent dates, became the author of *Shakespeare's Biography*, *Studies of Shakespeare*, and a *Pictorial Shakespeare*. Other well-known works with which his name is connected are the well-known *Popular History of England*, of which he was the writer; *A Pictorial Bible*; and *Knight's Penny Encyclopedia*, afterwards re-published in 1853-61 as *The English*

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Cyclopedia. Lord Brougham had taken the chair at a dinner given in celebration of the completion of the original issue of the work. In 1835 Knight, doubtless by the influence of Brougham, Hill, and other political friends, obtained the appointment of publisher to the Board of Trade. In January, 1896, the portrait in oils of Charles Knight was presented by the Commissioner to the Mitchell Gallery at Glasgow.

Charles Knight had, in 1814, married a lady who was the second daughter of an architect, settled in London, who was one of the two sons of a Devonian, and bore the good old Devonshire name of Vinnicombe. She had borne him a family of eight children—three sons and five daughters. Such, then, was the family to whom Kerr was introduced while yet a student for the English Bar—possibly by Matthew Davenport Hill, though it matters little by which of the mutual literary and political friends the introduction was given. Six months after her young Scotch admirer had been called to the English Bar, namely in August, 1848, he married Maria, fourth child and third daughter of Charles Knight. The lady was about two years her husband's junior. The Commissioner, to the last, retained the greatest affection for her. She died in May, 1884, after which he was seldom seen in society. As a result of this marriage, five children were born—four sons and a daughter. The two elder sons died before their father, but two of the sons and the daughter survived him. The writer of these lines is indebted to them for having freely placed at his disposal the ample materials for this imperfect memoir of a distinguished

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father, for whom those friends, who had the privilege of really knowing him, must ever retain the greatest esteem and regard.

It may not be out of place to here mention, in passing, a remarkable instance of the robust independence of the opinions formed by the Commissioner. So closely connected was he with one who was no mean Shakesperian scholar, that he might naturally have been expected to be an orthodox holder of the Shakesperian faith. The present writer has, on the other hand, ever since he began to study the *evidence*¹ on the subject, regarded it in the light in which it presents itself to most trained lawyers. He has felt that one who dares to form his conclusions by the light of facts, however much they may be against certain popular beliefs, cannot doubt that Lord Bacon was the real author of the plays published under the pseudonym of "Shakespeare." The very name did not exist until, by the aid of the *Promus* (or Common Place Book) found some years ago at Northumberland House amongst Lord Bacon's papers, we can actually see Bacon in the act of manufacturing it. Lord Bacon was probably prompted to adopt a *nom de plume* by the fact that—though many young men secretly did so—it was in his day generally considered a disreputable thing to write for the stage, particularly for money. He also had some special personal reasons of his own for keeping what he did secret, inasmuch as his mother was a strict Puritan, and accordingly hated "stage plays"; and he was himself ambitious of holding high office in the State.

¹ See remarks near end of chapter on pp. 24-5.

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Though he held these views, the writer was delicate about confessing—even to so intimate a friend as the Commissioner—that his mind was possessed by what most people regard heretical doubts about the “orthodox” Shakesperian faith. One day, however, in consequence of a casual remark which had dropped in conversation, he ventured to hint his views gently. To his amazement, there came the immediate answer, given with the Commissioner’s usual emphatic decision and promptness, that he “had nae doubt about it.” He then proceeded, with his accustomed clearness, to express a very decided view substantially identical with that timidly advanced by the present writer, that, while the cypher theory is not worth serious argument, the many scores, or as some would say, hundreds of literary parallelisms alone offer ground for the gravest suspicion ; and almost positive proof is afforded by the combination of the above facts with the further singular coincidences that the plays, taken in the chronological order of their production, refer to incidents in the life of Bacon’s own life and not in that of Shakespeare ; that the order in which these plays appeared is also the order in which such incidents occurred in Bacon’s life ; that not only incidents in Bacon’s life, but subjects which he was known to be studying (such as the action of the winds which is shown in the “Tempest”) are reproduced in the plays though they were not such as we know Shakespeare to have been acquainted with ; and that the appearances of the plays vary with Bacon’s known fortunes, being comparatively rare when he is busy, but frequent when his fortunes are

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known to be at a low ebb. Both agreed in opinion that all these coincidences taken together form a tremendously strong body of circumstantial evidence ; and that such a chain of evidence cannot be broken either by Shakesperians declining to argue, either, as some urge, on the ground that "I never read the other side" ; or, as others do, by discussing the point with as great an apparent theological hatred for opponents as though it were a polemical question of doctrine which had arisen in the early ages of the Church. The Commissioner concluded, "I don't know what my good father-in-law Knight would have said to me, for the question had not arisen in his day. Betterton, the actor, an hundred years after they first came out, had recognised the genius in the plays ; jumped without evidence to the conclusion that the stage-manager who brought them out was the writer, because his name sounded the same as that given as the name of the writer, though spelt differently ; and so gathered a lot of personal gossip about him without getting any proof at all of his authorship ; and that's exactly what the Shakesperians have been going adoring ever since. But Knight was a sensible man."

Within a year after Kerr's marriage an eldest son was born (July 18, 1849), who afterwards entered the army, proceeded to India with his regiment, and within fifteen months of his arrival there, died (May 15, 1871) at Meerut, where his brother officers erected a monument to his memory. All Kerr's other four children were born before the end of 1858, and consequently before he was appointed to the position he held till his death.

CHAPTER III.

KERR'S EARLY PROFESSIONAL PURSUITS—SEEKS A CITY OFFICE—CIRCUIT LIFE—EXPERIENCES AS A DEPUTY COUNTY COURT JUDGE — PROFESSIONAL PUBLICATIONS.

WITH a rapidly increasing family springing up about him, we may be sure that Kerr was not neglectful of any stray guineas which he might obtain an opportunity of earning. Early life at the bar is for most men but a trying time of waiting for business; and we have no evidence that it was anything else in Kerr's case. His means too were narrow.

In 1850, and within eighteen months after Kerr's marriage, he first sought a City appointment. This was the office of a City Pleader. Probably very few of the general public of to-day have the smallest idea of who and what a City Pleader was. Even amongst professional lawyers such knowledge is growing scarce. The meaning of the term must therefore be explained in some detail. After the Norman Conquest, the City retained its own courts, as distinguished from the King's courts at Westminster; and it was a privilege of the freemen of the City that they could only be impleaded in the City Courts. The City Courts were the Court of Hustings, the Mayor's Court, and the Courts of the two Sheriffs. All

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suitors in these courts had to "make" (or appoint) "their Common Pleaders." The citizens of London appointed four attorneys to be their "Common Pleaders." In time it came to pass that no one could have a case tried in a City Court without these Common Pleaders being all employed. A party who chose to do so could, indeed, employ his own "Attorney out of court," but the attorney so employed had to instruct one of the Common Pleaders to represent the client in court. For the Common Pleaders had an exclusive right of audience just like that which, till the end of the reign of William IV., the Serjeants possessed in the Court of Common Pleas at Westminster. The Second Report of the Municipal Corporation Commissioners, made in 1837, describes the rights of the Common Pleaders in the following language :—

The Pleaders have the right of practising as Barristers in the Mayor's Court and the Court of Hustings, and if any counsel be retained for a cause depending there, who is not one of the four Pleaders (even if he be the Common-Serjeant), it is a rule in these courts that each of the four Pleaders must have a Brief on one side or the other. The foreign counsel are seldom introduced except when the case is of an unusual kind in respect of the amount or the nature of the question. Cases of compensation are often led by foreign counsel. The Corporation, in such cases, usually employ for themselves the Common-Serjeant and the two senior Common Pleaders.

The fees taken by the Common Pleaders were, it should be noticed, small in amount. The number of such fees, and the possession of a monopoly, made the office of "Common Pleader" a valuable one.

To become a Common Pleader was an object of

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Mr. Kerr's ambition in 1850. We find preserved amongst his papers the address seeking the office which he issued. It is of interest, as recording the first introduction to the Corporation of an energetic Scotsman, destined in after years to be a faithful City servant for a period approaching half a century. In it Kerr states the fact that he had "little connection with the Corporation," as he afterwards also said in his application for the judgeship of the City Sheriff's Court.

The testimonials accompanying this application threw light upon a period of Kerr's life, of which comparatively little is known. Of three only, one was from Mr. M. D. Hill, and the remaining two from Mr. Wilde, the Conveyancer, and Mr. Harrison, the Special Pleader, in whose respective chambers Mr. Kerr has already (p. 17 *ante*) been stated to have been a pupil, on the authority of the internal evidence contained in these documents. For this reason, and not because they at all differ in any particular respect from testimonials of the character in question generally, they may be set out here:—

From M. D. Hill, Esq., Recorder of Birmingham.

44, CHANCERY LANE, March 20, 1850.

MY DEAR SIR,—If any testimonial of mine can be useful to you in your intended canvass for the office of City Pleader, you are heartily welcome to it. I have known you long, and I feel assured that you will fill the duties of the appointment with credit to yourself and satisfaction to every member of the Corporation who may have been induced to give you his vote.

Believe me, dear Sir,

Your faithful servant,

M. D. HILL.

R. M. Kerr, Esq., &c.

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From E. Tarrant Harrison, Esq., Pump Court, Temple.

TEMPLE, March 19, 1850.

MY DEAR SIR,—I am much gratified to hear that you are a candidate for the vacant office of a City Pleader. I have had considerable opportunity whilst you were with me as a pupil, and since, of judging of your abilities and attainments as a lawyer, and I feel great pleasure in having the opportunity afforded me of testifying my full conviction of your fitness in every way for the office which you aspire to.

I shall rejoice to hear of your success and

Believe me ever to remain, my dear Sir,

Yours very truly,

E. TARRANT HARRISON.

R. Malcom Kerr, Esq.

From S. F. T. Wilde, Esq., Barrister-at-Law.

10, SERJEANT'S INN, March 20, 1850.

MY DEAR SIR,—However desirable it may be in theory that candidates for official situations should produce testimonials of their ability to fill them in practice it is useless, for documents of their nature rarely if ever have any weight with those for whose guidance they are intended, their complimentary character being too well understood to render them of any value. If, however, you still wish for any expression of my sentiments as to your capacity to fill the office of Common Pleader of the City of London for which you are a candidate, I must not in justice to you withhold it, for during the time you were in my chambers, and since you have left them, I have had the fullest opportunity of ascertaining the extent of your legal acquirements, and I am so well satisfied as to your perfect competency to discharge the duties of the appointment which you seek not only with credit to yourself, but with advantage to the public, that I am very anxious that you should obtain it; and I shall not only be glad to hear of your success, but shall be most happy to promote it by any and every means in my power.

Believe me, my dear Sir,

Ever very faithfully yours,

SAMUEL F. T. WILDE.

Robert Malcolm Kerr, Esq.

The candidature of Mr. Robert Malcolm Kerr for the office of "Common Pleader" cannot be exactly

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said to have been unsuccessful. The Corporation took the opportunity of a vacancy to begin to abolish the office, and decided not to fill this vacancy; consequently the office never fell to the lot either of Kerr or any of his competitors. The few testimonials he obtained in support of his application, and the absence of any evidence in the numerous papers which would be preserved, goes to show that he made no very special effort to obtain the appointment for which he was nominally a candidate, and makes one shrewdly suspect that the candidature was in truth only what he would have called "a bold advertisement," designed to make him known, and perhaps to serve some ulterior purpose.

In the following year (1851) Kerr commenced to act as a Deputy County Court Judge. He first did so for Mr. Arthur James Johns, then the Judge of a Welsh County Court Circuit, comprising the towns of Corwen, Bala, Dolgelly, Machynlleth, and Aberystwith. His first appointment so to act is carefully preserved amongst Kerr's papers, and is signed by Mr. Johns, and dated July 11, 1851. A subsequent appointment, similarly preserved, is dated September 6, 1851; and so also is one by Mr. John Herbert Koe, the Judge of Circuit No. 38, which bears date July 14, 1856.

The law as to the appointment of a deputy by a County Court Judge was, at that time, rather different from what it now is. Then, the deputy appointed was only required to be a barrister of "three years' standing." The qualification now required is that the person appointed deputy shall be of at least *seven*

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years' standing. On the other hand, a deputy can now act without any previous approval by the Lord Chancellor or otherwise, provided he possess the qualification of being of the necessary standing at the Bar (seven years), now required by statute (The County Courts Act, 1888). His appointment must, however, be at once reported to the Lord Chancellor. In 1850-6, a deputy could not act except with the express approval of the Lord Chancellor, signified before he did so. Accordingly, Kerr's two first appointments as Deputy County Court Judge were signed as "approved by Truro C.," and the third one as "approved by Cranworth C."

Newspaper cuttings, containing reports extracted from the Welsh newspapers of cases tried before him when sitting as Deputy Judge in "The New County Courts" have been carefully preserved by Mr Kerr. County Court cases do not seem to have, at that time, very much differed from the ordinary run of cases now tried in country County Courts. The newspaper reports are criticised in the following characteristic note: "Reports—but exceedingly incorrect ones—from the Bangor and Carnarvon newspapers, of the Courts of September, 1852. The reports may do for the *public*, but a lawyer would look *aghast* at them."

Amongst the cases which Deputy Judge Kerr had to try in the summer of 1851, and on the occasion of his first acting as a Deputy County Court Judge, was however one of *Rees v. Williams*. He refused to try it, as a writ of *certiorari* to remove it into that Court had been issued by the Court of Exchequer, and he considered that the writ was good. Subsequently,

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early in the following Michaelmas Term, a notice to set aside the *certiorari*, on the ground that it was on the face of it bad, for certain technical reasons, was made by the late Mr. Morgan Lloyd. The Court however, thought that, on the face of it, the *certiorari* was valid, thus confirming the view which Deputy Judge Kerr had taken of it in the previous July. A newspaper report of Mr. Morgan Lloyd's motion, and of its rejection, was preserved by the Judge, prefaced by the following note—

The subjoined extract refers to a case which was entered for trial at Dolgelly in July, 1851. The objection to the return was taken, and I was asked to go on and try the cause, as there had been the expense of the summons, but declined. The Ex. had jurisdiction to issue the writ. This, therefore, the *first* of my judgments submitted to a Court of Appeal has been confirmed. I cut the extract from a newspaper I met with accidentally.—R. M. K.

The report to which the above note is a preface is as follows :—

In the Exchequer of Pleas Nov. 4 (1851).

Rees v. Williams—In this case a *certiorari* has been obtained by the defendant to remove the proceedings from the Merionethshire County Court to the Court of Exchequer on the ground that difficult questions of law were likely to arise in the trial of the case.

Mr. Morgan Lloyd now moved to quash the *certiorari* on two grounds—

1st.—That the plaint was entered to recover the unliquidated balance of a partnership account.

2nd.—That the affidavit on which the *certiorari* was granted did not disclose sufficient grounds for the removal of the plaint.

JUDGMENT.

B. PARKE—If the plaint had been really for the unliquidated balance of a partnership account this Court would have quashed the *certiorari*. But the plaint discloses a liquidated demand and

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appears on the face of it therefore such as this Court has jurisdiction to entertain. If the Plaintiff's demand be really an unliquidated partnership demand, his course will be to abandon the present plaint, and to enter a fresh plaint in the County Court describing his demand as an unliquidated balance of a partnership account. If he does so, we shall not remove such a plaint. In the present instance the Plaintiff has described his cause of action as a common law demand over which the Court has jurisdiction.

B. ALDERSON—If the Plaintiff will enter a fresh plaint, which he may, describing his demand as an unliquidated partnership claim, we shall not grant a *certiorari*. I am not so sure, however, that a Court of Equity will not.

C. B. POLLOCK—As to the other point, we cannot try on affidavits, whether points of law are likely to arise at the trial. The defendant's attorney has sworn that such would be the case, and that that is a sufficient ground of removal. If it had appeared on the plaint that the claim was an equitable demand we would have quashed the *certiorari*. The form of the plaint has misled the defendant.

Rule refused.

The administration of justice by Kerr as Deputy Judge appears to have given satisfaction. For we find such notices as the following :—

DOLGELLY.

The County Court was held at Dolgelly on Saturday last. There were very few cases, the general rule being in this place that four-fifths of the causes are settled before hearing, one of the strongest proofs that could be offered (were proof wanting), not only of the satisfactory administration of justice in our local courts, to which we have so often referred, but of the confidence with which these tribunals have inspired alike plaintiffs and defendants, the latter knowing well that no crochets in pleading, or suppression of evidence, will enable them to contest successfully against a just demand. (*Carnarvon and Denbigh Herald and North Wales Advertiser, October 18, 1851.*)

BALA.

This Court was held at Bala on the 13th instant, Mr. Kerr sitting as Judge.

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A Plaintiff in an action for goods sold to the amount of £21 odd, failing to make out a case in compliance with the Statute of Frauds, the defendant's interest being watched by Mr. Royle of Bala, the cause was adjourned to the next court for the production of further evidence, the Judge considerably explaining to the plaintiff who did not speak or understand English, what would be necessary to be proved in order to proceed in his suit.

Our correspondent in reference to the above says—

I would ask how many of your readers and how many of the tradesmen of North Wales are acquainted with the provisions of the Statute of Frauds. And further, I would ask those of your readers, who know anything of the practice of the Superior Courts, whether they ever heard of a case being adjourned there only that justice might be done. To this fact we may pledge ourselves : that had the suitor at Bala failed to make out his case at Westminster, as he did last week at his own door, he would have been nonsuited in an instant, and have found himself saddled with £50 or £60, with the satisfaction of beginning a fresh action if he were insane enough to venture a second time into Westminster for £20.

That others, as well as Deputy Judge Kerr himself, were satisfied with the way in which he discharged his duties, is shown by other evidence than the extract from the *Carnarvon and Denbigh Herald* of November 8, 1851, which is given above. A question of some importance as to the law between an outgoing and an incoming tenant, with reference to crops, had been tried before him in the Corwen County Court. He had reserved his judgment. The case excited considerable local interest, the newspaper reported the proceedings at the Court at which it arose as follows :—

NEW COUNTY COURTS.

Before R. M. Kerr, Esq., Barrister-at-Law.

CORWEN.

The Court was held at Corwen on the 9th inst. by Robert Malcolm Kerr, Esq., Barrister-at-Law.

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The only cases that gave variety to the proceedings were two. . . . The second case was one, the decision in which will not only regulate the judgment in other cases, but will be of some importance to many of the farmers in the parish of Corwen.

Hugh Hugh Hughes sued E. H. Phillips for the half value of the tenth of the wheat crop of a farm which the plaintiff had surrendered to the defendant at Lady Day last. It was and is still a custom in that part of the country for the outgoing tenant to have one-half of the grain crop, the incoming tenant being entitled to the other half. Previously to the tithes of Corwen being commuted into rent-charge there was no difficulty about this division, which took place after the parson had taken his tithes. In the present case the defendant being liable for the rent-charge, had taken the tithes as the parson would have done, and had then divided the remaining nine-tenths with the plaintiff. The plaintiff offered to pay to the defendant one-half of the proportion of the rent-charge of the land in crop. The proportion of rent-charge of which the plaintiff offered to pay half bore the same proportion to the rent-charge of the whole farm as the ground which had been cropped bore to the whole extent of the farm. In the present case it amounted to barely one-third of the half-value of the tithe of grain which had been taken by the defendant. The plaintiff now contended that the tithes being commuted into a rent-charge, on payment by him of the proportion he had offered, the whole crop ought to have been divided equally. As it had not been so divided, and as the defendant had abstracted one-tenth, the plaintiff claimed to be entitled to recover one-half of the value of the tenth so abstracted.

The case of the plaintiff was ably argued at some length by Mr. John Jones, his Attorney, and as the parties were nearly agreed as to the facts on the recommendation of the Court, certain formal amendments were made in the proceedings, and the parties made mutual admissions so as to enable the Judge to decide the point at issue on a case agreed upon by them, which his Honour carefully read over for their approval. As the decision, however, affected other cases before the Court, and might be of interest, and possibly of importance, to many who had given up and entered into possession of farms on similar terms, the Judge reserved his decision till the next Court.

We hope to be able to furnish our readers with the judgment in question.

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The newspaper from which the above report is extracted was subsequently invited to express an opinion on the merits of the cases which had raised the question of farming rights. It, in a leading article, declined to do so in terms which were very complimentary to the Deputy Judge, and shows that he was, even then, obtaining the confidence of the public. It said :—

It must be left to the Judge of the Court as concerns the facts and the law bearing on the case, but we cannot on the whole but agree with Mr. Cooper's views.

That his Honour's final judgment will accurately decide the legal question we have no doubt, Mr. Kerr's capacity for forming a matured view being unquestionable; and if that view be contrary to the opinions of certain parties, still outgoing and incoming tenants wishing to decide equally can make a special agreement so to do.

There is, moreover, another special reason why our opinion should not be sought, which is that the final judgment of the Court has not been fully published, and cannot be given until our next impression is worked off. The importance of the question raised did not fail to strike us, but we are chary of volunteering observations on matters pending before the regular judges of the law.

It is enough for a journalist in such cases to aim at giving early and correct reports, and this we have always striven to do despite of cost, labour, and anxiety.

Our reporter will take care to secure the judgment on the Corwen case at full length, and we have no doubt that it will prove satisfactory to all reasonable persons, for Mr. Kerr's ideas of equity are not drawn from a capricious notion of right, but are in collateral dependence alike upon law and fact according to the sterling old maxim of judicial notoriety, "*Discernere per Legem quid fit Justum.*"

A small trace of the Commissioner's activity outside the usual run of such ordinary professional work, and such as generally falls to the lot of a young barrister

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is that on July 17, 1852, at the election for Middlesex which took place that year, "Robert Malcolm Kerr, of Pump Court, Temple, Esqre," was appointed Deputy Sheriff "to preside at the taking of the poll at the Mile End Polling Place." The occasion was that of a General Election, one of those periodical occurrences about which some words used by the *Saturday Review*, in reviewing one of Kerr's books at a time when it happened that the Parliament previously elected was being in its turn replaced by another, may well be quoted, for they are as applicable now as they were then.

The elections are over; we have reconstructed our legislative machine, and wound it up to go for, perhaps, four or five years. It is constructed very much like its predecessors, and what a marvellous piece of mechanism it is, considering the work that it is intended to do, and the manufacture that it actually turns out! The shopocracy and the ploughocracy, the men who smirk behind counters, and the men who speculate in beans, are the engineers who put it together. The men who have no opinions at all, or, if they have a fancy, it is a general taste for bloodshed, and an *à priori* dislike of moderation—are the materials of which it is composed. And the work it is set to do is to continue the woof, woven through many centuries of the most refined, the subtlest, and the most complicated science with which the mind of man is conversant. And their mode of setting to work will be nearly as eccentric as the system which brings them together. Nine-tenths of them will never read the laws they pass. Nineteen-twentieths will never understand them, and they will vote, not, it is needless to say, on the merits of the case—for that their happy ignorance renders impossible—but in furtherance of some party purpose, in deference to some party leader, or some importunate constituent, or in the fulfilment of that dutiful obedience which every Englishman owes to the Tories. After having fought its way through this dense mass of ignorance, every measure will have to run the gauntlet in committee of a score of conflicting interests and crotchets, and then

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maimed, battered, and transformed, it will take its place in the time-honoured ranks of the English Law, so thoroughly obscure, so perfectly divested of any unity or simplicity it may once have had, that its promoters will wait in anxious curiosity till some litigant brings it into Court, and a judicial decision has affixed to it a meaning.

The same year, 1852, saw the first development of Mr. Kerr's literary taste and ability. This, on both his father's and his mother's side, must have been inherent in Robert Malcolm Kerr. It was, doubtless, also stimulated and encouraged by the family of his wife. In 1852 also, as he himself states in his circular addressed to the Lord Mayor, Aldermen, and Common Council, on applying for the appointment of Judge of the Sheriff's Court, he published an edition of the First Common Law Procedure Act. This was the first work which proceeded from his pen. The reception which it met with may be gathered from the following reviews.

The *Law Magazine and Review*, in its issue of November, 1852, said : " Mr. Kerr's is the best edition we have yet seen of the Act for a correct view of its practical effort and intent."

The *Legal Observer* said :—

In the introductory chapters to this work Mr. Kerr gives—1st. A summary of the changes effected by the Act. 2nd. An elementary view of an action at law under the new Procedure ; and 3rd. An outline of the action of ejectment. This review of the scope and effect of the Act is very ably written, and will be found of much assistance to the practitioner in carrying the various provisions of the Act into effect.

Said the *Globe*: " The introductory and illustrated portions of the volume before us will be found exceedingly useful under the new and untried Act."

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Another newspaper also favourably noticed the work. It was said by the *Examiner*: "Mr. Kerr, in a volume which we can heartily commend, prefaces the Act with a clear and able introduction, and prints it with practical notes between its clauses."

Satisfactory proof that these favourable reviews of the young author's first book were something more than the complimentary comments merely of over friendly critics was furnished by the substantial facts, which we may be sure were especially gratifying to his thrifty nature. The first edition of the work was exhausted in a fortnight, and in consequence a second was at once called for. This also soon became similarly exhausted, and like the first "out of print." His book's success caused Mr. Kerr to be employed by his publisher, Mr. Crockford (a then well-known publisher, and carrying on business at 29, Essex Street, Strand), to "settle" the Form of Warrant required under the Absconding Debtors Arrest Act. The book probably too, like other law books of a practical sort, brought its author a considerable accession of business connected with the matters with which it dealt.

Thus encouraged by the great success of his first book, Kerr was not long in producing another. In the following year (1853) he published *An Action at Law*. The nature of the work may be gathered from the reviews of it which appeared both in the professional and in the non-legal journals.

The *Legal Observer*, in its issue of February 11, 1854, remarked:—

Mr. Kerr, who is favourably known in the profession for his able edition of the Common Law Procedure Act, with very ample

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Annotations, has rendered a further good service both to the practitioner and to the student by the compilation of the present volume, comprising an elementary and comprehensive view of the proceedings in *An Action at Law*. The book will be peculiarly useful to articulated clerks preparing for examination, and especially to that larger portion of them who have not had the advantage of a year's experience in the office of a London Agent, or who have been articulated to solicitors whose chief business is that of conveyancing. Nevertheless, they must acquire an adequate knowledge of the jurisdiction and practice of the Common Law Courts, to entitle them to a certificate that they are fit and capable to act as attorneys. . . . Mr. Kerr has clearly and concisely traced the steps of an action according to the altered form and course of proceeding under the Common Law Statute of 1852, and the rules of Practice and Pleading, framed in pursuance of its enactments. The author has judiciously included in his work a review of the constitution of the Superior Courts, and their jurisdiction in the redress of "private injuries" according to the method and arrangement of Blackstone, some of whose admirable language will be found in Mr. Kerr's pages.

Other reviews of an equally flattering nature were contained in many other papers. The general press united with the professional legal papers in praises of it. The general nature and scope of the work can be sufficiently gathered from the one review above set out. The reader would be wearied by a reproduction here of others of the favourable reviews which appeared of Kerr's first original work.

The next important episode which occurred in Kerr's life was that at the Summer Assizes for 1853 he formally joined the Northern Circuit.

At that date the old Circuit system still flourished in full vigour. It maintained its authority chiefly by means of the Circuit Mess, which is obviously alluded

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to by the author of the works known as "Shakespeare's Plays" ¹ in the remark—

Do as adversaries in law—

Strive mightily, but eat and drink as friends.*

On stated occasions, called "Grand Days," sham Courts were usually held to try supposed offenders against the traditionary discipline, regulating and maintained by "the Bar Mess" of a Circuit.

Kerr thus joined the Northern Circuit. Nowhere was its organisation more perfect than it was on the Northern Circuit. The Circuits kept up with a tight hand, the then discipline and etiquette of the Bar. But, if these were vigorously enforced, this was always done in a good-humoured and sociable way. Offenders against the "discipline" of the Bar, as it prevailed on that particular Circuit, were usually dealt with in a way really proportioned to the magnitude of the offence which they had committed, and Circuit punishments largely consisted of fines of wine, or of sums sufficient to pay for a small named amount of it. If an offence were, as will sometimes occur, a mere, almost accidental, violation of Circuit discipline, it was well met and punished by the offender being made to provide a slight quantity of wine, or of the funds with which to purchase it. If it were of a graver nature, and regarded by the Circuit to be a grave breach of professional propriety, the offender

¹ As to their authorship see also pp. 24-5.

² *Taming of the Shrew*, Act I., Sc. 2. According to orthodox Shakespearian believers, "pure genius" seems to have revealed to the writer an intimate knowledge of the habits and inner life of the Bar on Circuit

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might even be punished by total exclusion from the "Mess" of his Circuit. Sometimes, indeed, both this extreme penalty, and even lighter ones, were not inflicted with entire discretion. Thus, in this very Northern Circuit, the Bar Mess once expelled from it a leader, the late Mr. Wedderburn, K.C., who, like the "Jackdaw of Rheims," was not one whit the worse, continued to flourish, notwithstanding that this ban of excommunication had been imposed upon him, and that other members of the Circuit with one exception only refused to hold briefs with him. Mr. Wedderburn eventually became Lord High Chancellor of England, with the title of Lord Loughborough! He then repaid the loyalty of the one man who had been faithful to him by creating him a Judge.

The Mess of a Circuit was, however, principally concerned with imposing fines for small (so-called) offences, such as travelling in a public conveyance, when that mode of journeying still remained unrecognised by the Circuits; or lodging in a forbidden part of an Assize town; or, when railways had grown to be allowed, travelling second class; or entering the coffee-room of an hotel. For the Bar are great sticklers for tradition, and wont to impose a penalty on any member of the Circuit Mess who violates tradition. Mrs. Partington and her celebrated mop are sometimes rivalled by the Decrees of Circuit Bar Mess. In the old coaching days, for instance, it was forbidden to travel by public conveyance, such as stage coach, each member of the Circuit had to "ride it" on his own or a hired horse, or to "travel it" in his own or

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a borrowed carriage. Again, for some time after the introduction of railways, the prohibition against travelling by a public conveyance was still kept alive. When, at last, a concession was so far made to general convenience and public taste as to tolerate Railways as a mode of travel, it was only on the condition that a member of the Bar who "took rail" shall invariably travel in a first-class carriage. At this day even, a Barrister who should communicate with several of his own clients by typewritten duplicate letters would not improbably find himself convicted by his Mess of the heinous Bar offence of having "issued a Circular"! If circumstances (*e.g.*, the removal of his chambers and consequent change of address) should compel him to make the same fact known to several amongst his clients, the etiquette of some Circuits would demand that he should address each separately, as the labour-saving device of modern days of writing a single letter to one addressee and having it duplicated would be probably held to amount to "issuing a Circular," which no Barrister is allowed to do. Strictness has, too, been long exercised, moreover, with regard to a Barrister's lodgings. Thus, in one case within the writer's knowledge, Barristers were only permitted to stay on a certain side of a certain bridge. There was only one hotel of a good class on the proper side of the bridge, and about 150 yards from it. The accommodation at the command of the Bar was consequently very limited. One day, however, the Leader of the Circuit, a somewhat masterful man, arrived in the town late, to find no rooms at his disposal. He raved and stormed, and finally took a suite of rooms at an excel-

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ent hotel about fifty yards on the wrong side of the aridge. The "Circuit Rule" was at once altered, and the hotel "on the proper side of the bridge" henceforth no longer enjoyed a monopoly. The writer himself was once not so fortunate. Arriving one winter's night at the little town of Dorchester by the last train, he found not a lodging to be had in the whole town, a heavy snow-storm coming on, and no other train leaving that evening for Weymouth, which was the nearest and only habitable town at hand. Under these circumstances he bethought himself of the Registrar of the County Court, who was both a personal friend of his own, and an old schoolfellow of his father's. He was there kindly received, and entertained till next morning. But what had taken place was soon discovered. The Registrar, alas, was a solicitor, and actually had a heavy case in Court next day, to take a part in which the teller of this present terrible tale against himself had come down from London. In this he duly appeared the next day *as Junior on the other side*, a position he had occupied for many months previously. But some one "laid an information" against him with the Circuit Court (the informants in such cases are always anonymous), with the result that the offence was visited with a "fine" of £1. The penalty was, of course, exacted and duly paid.

Many of the fines for "Circuit offences" were, in reality, complimentary fines. Thus, a fine was inflicted on a man who "went Special" to another Circuit, or to a Sessions other than one to which he had regularly attached himself. So it also was on a man who obtained an appointment on the Circuit of a substantial

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and permanent nature, such as a Recordship, or the office of a Revising Barrister. Above all, a fine was inflicted on any man who got married, for was not such a thing in itself a confession of prosperity earned by acquiring many fees, of which other men on the Circuit must have been deprived?

While inflicting a fine on a member for such a confession of prosperity as getting married impliedly admitted, it is but fair to the old Circuit system to add that, in the case of a popular member, the comparatively small fine imposed on an offender in this respect was sometimes much more than made up to him by many of the members of his Circuit uniting together, and presenting him with a handsome wedding present.

Indeed, the entire Circuit system of old, properly understood and worked, was a pleasant way, on the whole, of enforcing the discipline of the Bar, and of preventing the commission of grave offences against its discipline by calling prompt attention to even small deviations from it. The Circuit system also had the great advantage of making the different leading advocates at the Bar know one another to a nicety, and thus led to causes being conducted on each side with an honour and a courtesy which left nothing to be desired.

The functions of the old "Circuit Messes" are now to a large extent exercised by the Bar Council, some of whose members, others complain, are a little inclined sometimes to take themselves too seriously, and to use the Nasmyth hammer of that powerful body for the purpose of cracking nuts!

It must, however, be confessed that there were,

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even in the old days of the Circuits, on every Circuit just a few men a little too prone to regard small grievances in (to continue the "nut" simile) the capacious spirit of the man who complained that another was continually insulting him, because the offender constantly cracked nuts in his presence though, as he knew perfectly well that the aggrieved one had hazel eyes, he must be aware that this was personally offensive, and so only do it by way of insult! Still, on the whole, the old system worked pleasantly and well, and maintained the tone of the Bar by a mixture of good-humoured "chaff" with punctilious discipline.

Mr. Macrory, K.C., who was the "Junior" (in reality the executive officer) of the Northern Circuit, at the time when Kerr joined it in 1853, is one of the few members of the Circuit of that time who still survive. He describes the Commissioner's connection with the Circuit as follows :—

19, PEMBRIDGE SQUARE, W., *December 6, 1902.*

MY DEAR PITT-LEWIS,—I have been torturing my brain and memory ever since the receipt of your letter to try and recollect any circumstance in the life on the Circuit (the Northern Circuit) of Commissioner Kerr, which would be useful to you in your work, or that would interest the public—and without success in getting much. He was not very long on the Circuit, for he joined (if my memory serves me) while I was junior of the Circuit that was the Summer Circuit of 1853, and you know already the date of his appointment in the City. But I know that his great love of justice was proved by a very small matter in the life of Circuit of the insignificant member who is addressing you. He remarked during the Circuit of 1854 that I had not a red bag,¹ and he asked me why

¹ The possession of a "red bag" is, or at any rate was formerly, in the old days when Circuit discipline was rigorously enforced, a special privilege. An ordinary Barrister's bag is *blue*, and no one

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I had not one. I told him that no one among the leaders of the Circuit had as yet thought me worthy of the distinction, when he at once remarked, "Why you are in a much better position than many who have had a red bag bestowed on them. I'll see to it." And he did see to it, with the result that before the end of that Circuit (summer 1854) a red bag was sent me by one of the leaders. A feather often shows which way the wind blew, and this shows how even in a small matter justice was his prevailing idea, or rather his guiding star. I cannot recollect whether it was to him or to Blackburn, afterwards Lord Blackburn, that the Circuit attached the name of "The Walking General Issue." I think it was to Blackburn, —of whom it was said he would get up in the middle of the night and contradict the Temple watchman proclaiming the hour of the night, or would contradict a weather cock. Kerr never held any office on the Circuit for, as I have said above, he was not long enough on Circuit to hold office. I am sorry I cannot help you more than I have done, and if these small contributions are of any use to you I am glad to send them.

I think your title is one which will be attractive, viz.: "Commissioner Kerr: an Individuality."

Believe me, dear Pitt-Lewis,

Yours very sincerely,

E. MACRORY.

Truth to tell, on the one side a man of Kerr's cast of mind would take little interest in what he would probably consider, in his younger days, as the mere trivialities of the Circuit, though reflection in his

permitted to buy himself a red one. The only way in which a red bag could be obtained was by a Leader sending one (supposed to be his own) to a Junior whose ability had attracted his attention as a delicate compliment, conveying that the recipient ought to be himself a Leader. Etiquette required the gratified Junior thus receiving a red bag to present the Leader's clerk with a guinea to replace the one which his master had thus generously bestowed upon another. As the price of a new red bag would only be about 3s. 6d. the Leader's clerk was generally as gratified at being empowered by his master to present a red bag as a Junior was at the receipt of one.

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more mature years would make him perceive that these things were really serving a useful purpose. On the other hand, it must be allowed that he was not personally popular with the Circuit. While a great Circuit generally, as a body, takes a generous view of the successes of its members, there are usually some men on it, at all events, of a supercilious nature, ready to exhibit in an unpleasant way personal jealousy. What may be called the "seamy side" of Bar life, as well as its most agreeable one, may be best seen on Circuit. Sometimes men of the hazel-eyed character just described succeed in giving a tone for a time to the whole Circuit, and for the moment invest a too successful competitor with an unpopularity which he does not deserve. This they usually do by fastening upon him the charge of being ready to do, if even he has not actually done, something which they proclaim is a great professional offence. Kerr had been successful with his publications, and was fortunate in getting employed in an important case soon after he had joined the Circuit. He thus soon became of sufficient importance to attract the envy and ill-will of such persons as are before described. Accordingly, a story was started that Kerr was a person ready to accept smaller fees than the usages of the profession permitted. This, in a sense, was true. The office of a City Pleader was paid by small fees, and by becoming a candidate for it, notwithstanding he knew that its income was derived from a number of small fees, lower in amount even than those generally paid to "Pleaders under the Bar," he had, in a sense, sanctioned them. It should here

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be explained that gentlemen practising "under" the Bar, not having been called to the Bar (there were both Special Pleaders and Conveyancers practising "under" the Bar), were permitted, till a period well within the author's memory, to accept as small a fee as 7s. 6d. or even 5s., and this was thought enough. But though no one could ever say with truth—much less prove—that Kerr had ever accepted a lower fee than a Barrister could take with perfect professional propriety, yet, said those of the "hazel eyes" temperament, his willingness to accept an office paid by these small fees was sufficient proof of the "*mala mens*," and of a readiness to offend when opportunity presented itself for conveniently so doing!

That Kerr was somewhat unpopular cannot, then, be denied. Indeed, stories are still to be met with as to how he was, more than once, attacked by a notorious person on the Circuit. This individual was a well-known pleader who, having been a Special Pleader "under the Bar," had been duly called to the Bar. We may be sure that he, at least, had never afterwards failed to exact the full fees which his professional position as a Barrister now entitled him. This worthy was by some thought to add force to his language by its habitual foulness and coarseness. So we hear that on one occasion, in the presence of several men he observed, without rebuke to Kerr, who was discussing some matter in which the Circuit was interested, though he himself had none, "There you are, Kerr, buzzing around and concerning yourself with everybody's business *like a slaughterhouse fly*." He, on another

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occasion, however, did not himself scruple to go out of his way to interpose in a matter in which he was not concerned. For he insultingly remarked to Kerr, again in the hearing of others, when the latter, long after appointment, was engaged in one of his many disputes with the City: "I hear that the Corporation will soon kick your dirty carcass out of that office under them which you've got hold of." The words "slaughterhouse" and "carcass" as above used are, it may be added, a reproduction of the choice language actually employed with what the old Pleaders pleasantly termed "a variance," to make them proper for decent print.

Kerr's connection with the Northern Circuit, though intimate, was not destined to be long. It had not in his case the results which have with many followed their becoming members of the great Circuit which long shared with the Western the distinction of being pre-eminent amongst the Circuits. In old days, the Circuits were a far more important element in the country than they have now become. Downwards from the reign of Henry I. all the important cases, civil and criminal alike, were in each county tried at the Assizes held at its city town. Travelling was not then easy, and this alone was sufficient to prevent cases of importance being, as they now usually are, taken up to London to be tried. In many instances, such as disputes about land, or as to rights claimed in connection with it, the plaintiff in old days and up to about 1870 had, by law, no choice at all except a claim as to where he would have his case tried. The place for trial, or "venue," as it was technically termed,

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was, by law, "local," that is to say, the case was obliged to be tried in the Assizes for the county in which the land was situated.

The common law itself was exactly the same on all the Circuits, but the practice varied on different Circuits. For instance, there exists "authority" for saying that matters which would be received as evidence upon one Circuit would not be evidence at all upon another.¹

Possibly, Kerr was induced to join the Northern Circuit in the summer of 1853 by a literally "shell-fish" reason. For on the County Court Circuit in North Wales, a locally very important case arose involving the right to an oyster fishery in the Menai Straits. This was tried at the following (1854) Liverpool Spring Assizes. In it Mr. Serjeant Wilkins appeared, "Mr. Kerr" with him as counsel for the plaintiff. Mr. Kerr, no doubt, "opened" the Pleadings, and the result of the case probably provided him with the wherewithal to "open" many oysters during the remainder of that season and long afterwards. The case, too, had a sort of ecclesiastical flavour about it. For the event of the action depended upon the right of the Bishop of Bangor, when following the occupation of the Apostles, to exclusively fish for oysters alike

¹ Legal authority for this statement can be found in a case of *Morewood v. Wood* (1792) where Buller, J., said that the "practice" as to the reception of a certain class of evidence "is different in different Circuits." The late Mr. John William Smith reports this in a MS. note of the case published by him in a note to a leading case of *Didsbury v. Thomas* formerly contained in his leading cases at p. 401 of the 1856 edition.

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on the deep waters of the Menai Straits as well as at the weirs there. The jury found (1) that the Bishop's right was confined to the weirs, and did not extend to the waters ; (2) that the fishermen (one of whom was the plaintiff, who sued for having been arrested on a charge of *stealing* oysters from the place in question) went for the purpose of asserting their right, and not to despoil the plaintiff's property ; (3) that the defendant had no ground to believe, and did not believe, that he had a right in the deep waters. This was unquestionably a verdict for the plaintiff, or for Mr. Kerr's side, on the question of right, and would, in any case, have entitled his client to the costs of the issues on such questions of right, which formed the main, and doubtless the most expensive, issues in the cause. The damages were assessed at £50 with a further £6 9s. for the oysters which had been seized ; such verdict being, however, subject to a question of law raised by the counsel for the defendant. This point, Mr. Baron Platt, the judge who presided at the trial, said they might appeal to the Court in London about, "if they thought proper."

There is no trace of any such appeal having been ever brought. Probably, the defendant's counsel did *not* "think proper" to carry the case any further, and felt that they were hopelessly beaten. For their "point" was that the defendant was protected by an Act of Parliament from having any action brought against him till after he had previously received notice of action. But the Act they relied upon only protected people who had acted on some right which they either really had, or honestly believe on some

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solid ground that they possess. The jury had, however, found that the defendant did not really believe he possessed the right which he had boldly asserted. No wonder, then, seeing this, and also that the costs of the trial of the question of right would, in any case, fall upon their client, the able and very learned counsel, of whom the "leader" was Mr. Watson, afterwards Baron Watson, did not "think proper" to further fight the case! In those days, actions were generally really won or lost long before they ever got into court, as much by the tact and learning of the junior counsel for the party who eventually succeeded as they were on their merits. Cases, being well prepared, did not then occupy the inordinate time in court which a "big" case now takes. A trial was a long one which lasted a couple of days, as this did, the trial having occupied a certain Monday and Tuesday. So the case was a considerable triumph for "Mr. Kerr," the plaintiff's junior counsel. Indeed, a trained lawyer can see the skilful hand of the junior counsel at work throughout it, and gradually leading up to the triumph for the plaintiff which was eventually won. Let us hope that this case, while, as has been stated, it probably furnished Mr. Kerr with many oysters during the rest of that oyster season, and much longer also, was not an instance of the fulfilment of his well-known views as to the avariciousness of lawyers; and trust that the oysters of the Menai Straits were not divided with the clients after the fashion in which it is traditionally said that the legal profession usually "makes partition" of these good things with its clients!

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The case is an excellent example of conduct of a kind which is common even to this day. A man with a long purse usurps a right, and with audacious confidence in the power of money, but also well knowing that he has no other ground for it, boldly and loudly asserts "his right;" well aware that though he possesses none, probably no one will ever be bold enough to challenge the Goliath armed with golden weapons. It was for the cause of justice and right for the poor, against the oppression of the rich, that Kerr fought throughout life with fierce fervour. We may be sure that his heart was in the battle which, with learning and ability, he eventually won for the poor fishermen of the Menai Straits.

The *Carnarvon and Denbigh Herald*, in its issue of March 25, 1854, commented on the case and its result in words which it must be feared, are in some instances as true now as when they were penned nearly half a century ago. It said—

Time immemorial, the Nimrods of the soil have created and increased their possessions by usurpation and though, in modern days, law has put a sort of limit to their powers of aggression, it has not been able to disarm. The disposition is to aggress. . . . What yesterday was usurpation to-day becomes "possession." To-morrow it is "property," and the next day it is pleaded as a precedent and cited as an example."

The year 1854 was a busy one with Kerr. Previously to his great Oyster Fishery case, tried at the Spring Assizes in March 1854, he had in the February of that year, and again later on in the same year discharged the duties of a Deputy County

Deputy County Court Judge

Court Judge. This last time, however, he went Circuit No. 38, then known as "The Home Circuit," and comprising the towns of Bishop Stortford, Chesham, High Wycombe, Uxbridge, Watford, Hitchin, Waltham Abbey, Hertford, St. Albans, Barnet, Edmonton, and Luton. The Judge who was then Judge of this County Court Circuit, and for whom Kerr accordingly acted as Deputy, was the late Judge John Henry Koe, Q.C.

No case of note appears to have come before Kerr for trial on this occasion of his acting as Deputy County Court Judge. At all events, none is recorded as worthy of notice, in the voluminous notes and memoranda which it was his practice to keep.

In connection with the arrangements for this County Court Circuit, there may be noted, however, that the notice of the holding of the different County Courts in this Circuit was given in a form which provided suitors in the Court with successful information, which any one who has a practical acquaintance with County Courts will see might still be given to them with great advantage. Besides mentioning who the Judge, the Registrar, and the High Bailiff at each place in that County Court Circuit respectively were, and giving their addresses, it also concisely stated what the jurisdiction of the Court was, and drew attention to certain every-day points of practice, want of familiarity with which causes many a suitor to come unprepared in the respects thus named, and so is a prolific cause of adjournments, with all their attendant expense. The jurisdiction of the County Courts, as it then existed (for in the present day it is somewhat more

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extensive than formerly), was thus concisely, but accurately, stated (in 1854) in the terms following :—

The Courts have jurisdiction in actions of debt, and for legacies, and shares of intestates estates not exceeding £50, for damages not exceeding £50 in tort, and for assault, trespass, and breach of contract or agreement expressed or implied; and in actions of replevin and ejectment for recovering possession of houses and lands where the yearly rent does not exceed £50; and by consent of the parties, in action for the recovery of debts, damages, and demands exceeding £50; and by the like consent in actions wherein the title to any land, Tithe Toll, Market Fair, or other Franchise shall be in question.

Attention is directed to the points of practice just referred to by a "Note" which was, at that time, perfectly full and accurate (though it would have to be now slightly modified); which ran as follows :—

NOTE.—The summons must be issued in the district where the defendant or one of the defendants dwells or carries on his business at the time the action is brought, in any other case it must be by leave of the court. The plaintiff on entering plaint must state the name, place of abode, and description of the party, and the amount, or particulars, of his account or claim, and, if his account or claim exceeds £2, he must leave at the clerk's office two copies of the particulars. Summonses for debts not exceeding £50, which must be served ten clear days before the Court day, may be obtained at the offices of the several clerks every day between the hours of ten and four.

N.B.—When the plaintiff claims a book debt he must bring his day book or other books of account with him to the Court.

In the same year, too (1854), which saw Kerr's great triumph in the "Oyster Case" of the Menai Straits, yet another "Common Law Procedure Act" was passed. His success in the annotation of previous

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Procedure Acts, of course, encouraged him to undertake an edition of the new Act, and the booksellers who deal in the publication of legal works were naturally ready to accept further productions from the pen of one already so successful as an author.

Accordingly, before the Common Law Procedure Act, 1854, was actually passed (as it afterwards was, with a direction that it should come into force on October 24, 1854), Kerr set to work upon annotating it. We who have lived to see the changes subsequently effected by "The Judicature Act, 1870," in full operation, will be, even if not lawyers, interested to note the various sweeping changes, as they were then thought to be, made by the Common Law Procedure Act of 1854. The principal of these were enumerated in a review of the work contained in the *Morning Advertiser*.

Great was the revolution thought to be which permitted a Common Law cause to be tried by a Judge alone, without a jury. Chancery cases had for centuries been so tried; in fact, the services of a jury were never made use of in the Chancery Courts. Nine years before the passing of this Common Law Procedure Act of 1854, the County Courts Act of 1845 had provided that, in these new County Courts, all cases should be tried by the Judge alone, *unless* one of the parties demanded a jury—thus making a trial by the Judge alone the regular procedure of the new Courts, and trial by jury the exceptional one. The experiment had succeeded, and the change was popular. Again: bold innovations on our Common Law of the first magnitude were

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in 1854 thought to be made by the borrowing from Courts of Equity, which had long been used to send matters of complicated detail to be "reported on" to them by a Chief Clerk, or by a person chosen by the parties, of a system of Compulsory References; by the introduction from the Courts of Equity of a right to administer interrogatories to an opponent, and to obtain "Discovery of Documents" from him; by the adaptation from the Courts of the City of London of the system of "foreign attachment" which had prevailed in that city for centuries; and by the granting of a right to plead by way of an "equitable plea" in a Court of Common Law, and as a matter of defence, something that would be unanswerable perhaps "in Equity," and on the other side of Westminster Hall, but at which the Courts of Common Law had hitherto refused ever to look.

The general Press, and not only the legal one, accordingly took much interest in the legal reforms effected by the legislation of 1854. A long and elaborate review of Mr. Kerr's edition of the Common Law Procedure Act of 1854 appeared in the *Morning Advertiser*. It, after enumerating in some detail the changes which the Act had made in practice and procedure, concluded thus:

On the whole this is one of the most important administrative statutes which have been passed for many years, and we recommend not only all practitioners, but any one desirous of understanding the objects and effect of the statute, to read Mr. Kerr's able and useful book. His introduction clearly points out in detail, under different heads, the evils intended to be remedied, and the mode adopted for that purpose; and we cordially echo the hope with which he concludes the introduction, in the words of the Common Law Commis-

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sioners, that the statute will "be the means of saving vexation, expense, and delay, and conduce generally to a better observance of justice, by adding to the speed and facility with which it can be enforced." Mr. Kerr's useful notes on the various sections of the Act will render his work valuable to the practitioner.

The *Globe*, just sixty years ago the vigorous evening paper which it is still, and the *Britannia*, whose reign in literature is now over, both also very favourably reviewed the new edition of the important Common Law Procedure Act. This Act gave two judges (the late Mr. Justice Sir Edward Shaw Willes and Mr. Baron Bramwell) seats on the Bench of the superior Courts, and his edition of it no doubt contributed a little to Kerr's some years later obtaining the judgeship of the Sheriff's Court.

One legal newspaper, the *Jurist*, noticed with disapproval two matters on which Mr. Kerr, in his annotations on the Act, had expressed views which were characteristic of him, and in later years often fell from him in the City of London Court.

As every one knows, he hated long or numerous speeches from counsel during a case. This dislike found expression, even in 1854. For, in a note to his edition of the Common Law Procedure Act of 1854 (to Sec. 18), he said that, in his opinion, the right to a further speech conferred by it was only given where cases were tried with a jury, and did not exist where the trial took place before a judge without a jury. It was considered by the *Jurist* that, in view of the first Section of the Act, Mr. Kerr's contention was not sustainable.

A second point on which the *Jurist* disapproved

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of Mr. Kerr's views was this. His dislike to the "piling up of unnecessary costs" was again and again expressed in later years in severe and caustic terms by the Judge of the City of London Court. Even within the recollection of the present writer, the manner in which arbitrations before a Barrister were conducted left much to be desired—from the client's point of view. Sittings were often needlessly numerous, and held for short periods, at times when it suited the convenience of each of the counsel to have a sitting; and they were frequently adjourned to suit the mere convenience of one of the counsel, and on other grounds which would be now considered entirely inadequate. The result was that "arbitrations" were long and costly; instead of, as is now, happily, the general course, being held in a businesslike fashion, and when once commenced, regularly gone on with, day after day, without interruption, until completed. Kerr saw in 1854 all the evils of the old system, which was then flourishing to its fullest extent. He commented upon it in terms which, in the opinion of the *Jurist*, "cast a grave and sweeping imputation upon his professional brethren." That paper expressed its "regret" at Kerr's remarks, and maintained, "in direct contradiction to Mr. Kerr," that "references to lawyers" were even then—as they certainly are to-day—very "satisfactory"—as to the legal profession they doubtless were!

In the autumn of 1854 Kerr again acted as Deputy County Court Judge on the Welsh Circuit. He acted in that capacity at Llangefni, Pwllheli, and at Bangor, Carnarvon, and Conway. Nothing of general interest

Lectures for Law Society

transpired on this occasion, except an incident at Bangor, which shows that Kerr's views in 1854 about commitments upon judgment summonses were the same as those which, in later years, and indeed down to the time of his retirement, he repeatedly and habitually on every fitting opportunity gave expression to in the City of London Court. From a Welsh newspaper is extracted the following speaking report of what it is said that the Deputy County Court Judge—who must have been a strong Judge even as a deputy—remarked, in September, 1854. His words will have a strangely-familiar ring in the ears of those who frequented his Court in the City of London forty years later.

BANGOR COUNTY COURT, SEPT. 22ND, BEFORE R. M. KERR, ESQ.

His Honour said he was not satisfied with the meagre information the plaintiff had given respecting the defendant's circumstances, and the summons must therefore be dismissed. His Honour further observed that there was a great outcry in the country upon the facility with which commitments are obtained on these summonses, and by and by there would be all kinds of letters in the *Times* about County Court judges, as there were now about clerical magistrates. It was a monstrous thing to commit men in this way without adequate inquiry, and he did not think the system ought to be encouraged. The plaintiff ought to be prepared to satisfy him (the judge) that the defendant had the means of paying, but, for all he could tell, he might have been sued in half-a-dozen other cases."

His editions of the Common Law Procedure Act must have attracted the notice of the profession to the ability of their writer. At all events, he in July of that year received a letter from the then Secretary of the Incorporated Law Society requesting

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him to undertake to deliver a course of lectures for it.

To this letter, which evidently much gratified him, he at once replied as follows :—

1, ELM COURT, TEMPLE, *July 27, 1855.*

SIR,—To the unsolicited mark of confidence, with which the Council of the Incorporated Law Society have honoured me, I cannot reply otherwise than by accepting their invitation.

I trust that my endeavours to justify that confidence will meet with their approval.

I remain, Sir, your most obedient servant,

R. MALCOLM KERR.

R. Maugham, Esq., Secretary to the Incorporated Law Society,
U.K.

The lectures delivered in pursuance of the invitation of the Society's winter session of 1855 comprised much the same subjects as a good Common Law lecturer then would select to instruct his students upon.

In the July (1856) following Kerr sat as Deputy for His Honour Judge Koe on Circuit No. 38 (see page 55 *ante*) with the written approval, as on the former occasion, and given by, in the same form as before, Lord Chancellor Cranworth. In December, 1856, Kerr again took his County Court as Deputy for Judge Johnes. The description given by a local paper of the proceedings at one of the Courts may be applied to all : "The number of complaints issued was a full average number. Many of them were arranged before the hearing. Those tried presented no feature of public interest."

Some of the cases at other places were indeed locally

LL.D. Degree

reported, but the reports fully bear out the statement extracted above.

In the winter of 1856, and the spring of 1857, Kerr again gave a course of lectures for that body in the Hall of the Incorporated Law Society. On these the same remarks may be made as on his previous course.

For the course of lectures delivered by him Mr. Kerr received the following vote of thanks from the Incorporated Law Society :—

INCORPORATED LAW SOCIETY, U.K.
CHANCERY LANE, LONDON.

At a Meeting of the Council Thursday, May 27, 1858.

Resolved, That the Council of the Incorporated Law Society of the United Kingdom have much satisfaction in acknowledging the learning and ability evinced by Robert Malcolm Kerr, Esquire, in the several courses of lectures on Common Law and Criminal Law delivered by him in the Hall of the Institution in the years 1855, 1856, 1857.

These lectures extended over five months—viz., from early in November till the end of April, while they were in progress, and early in the year 1857 Kerr had received the following most gratifying communication from his old University :—

GLASGOW COLLEGE, *January 16, 1857.*

SIR,—I have the pleasure to inform you that at their Meeting yesterday, the Senate of this University conferred on you the degree of LL.D.

Allow me to congratulate you on having obtained so honorable and well merited a distinction.

I am, Sir, your obedient servant,

DANIEL H. WEIR

Robert Malcolm Kerr, Esq., LL.D.”

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The newspapers of his native town naturally noticed with satisfaction the honour due to their townsman.

The *Glasgow Post* in its issue for the next day, remarked :—

GLASGOW, *January 17, 1857.*

We observe that the Senate of the University of Glasgow on Thursday conferred the Degree of LL.D. on Robert Malcolm Kerr, Esq., Barrister-at-Law, London. In doing so we think that our worthy professors have shown unquestionable discernment, with good taste; for, while Mr. Kerr's success and position at the English Bar entitle him to the distinction, the fact of his being educated at Glasgow College adds grace to the honour conferred on him by this learned body.

The *Glasgow Citizen* in its next issue said :—

On Thursday the Senate of the University of Glasgow conferred the degree of LL.D. on Robert Malcolm Kerr, Esq., Barrister-at-Law, London—a mark of distinction from his Alma mater which we regard as alike honourable to the Professor who bestowed it, and to its able recipient. Mr. Kerr is a native of Glasgow, and is now pursuing a successful career at the English Bar, where he has distinguished himself beyond many of his contemporaries, and where his talents will doubtless be duly appreciated and rewarded.

Appropriately enough, the first use which Kerr made of his newly-acquired degree of “Doctor,” was to prefix it to his name, as the editor of a book which proved to be the *magnum opus* of his life, and that by which he will probably be remembered by the lawyers of future generations so long as this evil world continues to indulge in lawyers. He had long been preparing an edition of the Great Blackstone. This he now published.

By it he, as remarked by the *Examiner*, added “his name for some years to come at least to Black-

Kerr's Blackstone

stone's, in these volumes of English Law, as Smollett added his to Hume's by the continuation of an English History."

The principle upon which he had edited Blackstone is best explained in the words of a review of a contemporary date. The *Press* said :—

The editor, Dr. Malcolm Kerr, is not afraid to take the field after the elaborate and learned labours of his immediate predecessors. Dr. Kerr's plan is simple. He gives the text of Blackstone with little alteration, making such additions to the various parts as are required by the altered state of the law. The matter contributed by the editor is distinguished by inverted commas, and thus the methodical arrangement of Blackstone is preserved while necessary additions are made. Dr. Kerr has conscientiously performed his duties; his Blackstone seems to us about as good as a Blackstone can be made.

We need not dwell upon the various courses which the different editors have pursued—some have left the text of Blackstone entire and added notes of the alterations in the law, others have subjoined notes upon those notes. Some have contented themselves with daily stating the changes that have occurred, while others go more largely into questions of politics and economy, in which latter cases it often happens that while Blackstone is too apt to tell us that "whatever is is right," the editor inclines to the opinion that whatever is is wrong, and the effect is a kind of Russian bath for the mind which, hurried from one extreme to the other, becomes impatient and seeks some milder treatment. Others have adapted Blackstone's text to modern law, some boldly, some timidly, while the arrangement of the subject has been altered by at least one editor to what appeared to him a more scientific distribution.

The review above set out is selected to be given at length because it best tells the principle on which the *magnum opus* of Kerr's life was written. Numerous other reviews of it appeared, however, in other well-known papers. Indeed, there was hardly

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a paper of position and of weight and influence in which it was not fully noticed.

The *Athenæum* (of March 21, 1857) contained a review extending to no less than three columns, explaining the plan on which the work was written, and commenting favourably upon it. It proceeded, "So much for the plan of this adoption. Of its execution we can speak in terms almost as favourable." The review then went on to discuss the execution of Kerr's plan in considerable detail. While remarking that the writer's language was "not always accurate, and seldom graceful," it said that even those portions of the work on which it made this criticism, showed "great care and accuracy." It selected as particularly deserving of this description, and as "admirable," Kerr's annotation of a Joint Stock Companies Act, which it referred to as "The wondrous Act of last session," said was "distinguished from most other statutes by the fact that no one ever *pretends* to understand it"; and concluded the exhaustive review by saying that the notes were "interesting and not oppressive," and remarking, "We can strongly recommend this edition as a student's book."

The *Spectator* said that the plan laid down had been executed "clearly and closely, with nothing of hiatus or jar"; and that the book was "very handsome, and will form, at all events, the country gentleman's edition of Blackstone."

The *Economist* (April 25, 1857) pointed out that the plan pursued by the editor might be "learnt from a passage in his sensible and judicious preface";

Kerr's Blackstone

thought it to be "one of the best modes of dealing" with Blackstone; and that the editor had "done his work with considerable judgment, and with a most creditable superiority to the temptation of unnecessary personal intrusion;" and, recognising that there was also "much *silent* editorial work in it," concluded by "sincerely" recommending the work to its readers, both professional and unprofessional.

The *Saturday Review* (April 18, 1857) recognised the importance of the work by giving it a review extending to over two columns. After commencing with the passage set out already on a previous page of this chapter,¹ it made some comments upon the style of Mr. Warren, the author of *Ten Thousand a Year*, who had also annotated Blackstone, but in a way which the reviewer thought betrayed that "a man who has written such novels is apt to have an ignominious apprehension of being dull." Mr. Kerr, it remarked, was not open to any charge of being fearful of being thought dull, for his dulness, it said, showed him to be "fully alive to the dangers of a literary reputation;" and it went on to assure him that he "made himself perfectly secure," since it thought that "the most captious attorney can find no treasonable homage to the Muses in his style." It admitted, however, that, "these literary defects apart, Mr. Kerr's edition deserves commendation for the extreme fidelity with which Blackstone is reproduced." The whole review, as will be seen from these extracts, was an excellent specimen of the "slashing" reviews, accompanied by

¹ See *ante*, p. 37.

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not a little minute criticism of small details, which was characteristic of the "Saturday Reviler" of those days, and is much beloved of not a few.

The legal professional organs also reviewed the work. The most unfavourable of these reviews was that which appeared in the *Solicitors' Journal* (June 6, 1857), in which both Blackstone himself, and the plan of editing his work adopted by Kerr were disparaged, and Kerr's literary style severely criticised; though it was added that Kerr "appears to have laboured at his task with great industry, and we are bound to admit that, so far as we can discover, the law has been accurately brought down to the present time."

The *Guardian*, the well-known organ of the English Church, thought the edition Mr. Kerr had published "not only the newest but the best," and likely to be "for some time to come," the standard edition of Blackstone.

On the other hand, the *Tablet* newspaper, the recognised organ of the Roman Catholic Church, published a series of long articles (four in number) which were entitled "Blackstone's Fallacies." These, while making the publication of Kerr's Blackstone the occasion for severe criticism upon the original author, spoke of the editor and his work with no unkindness, and were, in their own words, "less a censure than a criticism, so far as Mr. Kerr is concerned; we tell him frankly that if he had less reverence for his author, and more reliance on himself, he would have done better work."

The interest and attention attracted to Kerr's

Kerr's Blackstone

edition of Blackstone was not confined to this side of the Irish Channel. It was favourably noticed in Dublin, as well as in England and Scotland, alike by the general press, and by the recognised organs of the legal profession.

Amongst others, the *Dublin Review* (a Roman Catholic magazine) thought it would have been well "if Mr. Kerr had dealt with his author more boldly," but added that his additions to the text by way of notes were "useful and judicious, while his corrections are marked by such good sense as to leave nothing to wish, except that they were more frequent."

The *Irish Jurist*, a recognised organ representative of the Irish Bar, said that Kerr's Blackstone was "most carefully executed, and the additions of the author¹ judiciously interwoven with the original," and that the work as a whole was "excellent."

It is remarkable that, while the writers of the above reviews look at Blackstone from varying points of view, all practically agree that, short of writing a new Blackstone, Mr. Kerr had done the best for the classic commentator that can be effected, and even hostile critics admitted the accuracy of his "Law" in the notes added by him to Blackstone. Some of the writers of the above critiques openly wish for a new Blackstone. Others do not regard Blackstone with the almost superstitious reverence which some affect for that writer. Others, again, express recognition of the unique position held by Blackstone's Commentaries. Sometimes even those who wish a new Black-

¹ An evident Hibernicism for "editor."

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stone admit that there is in many such minds "a Divinity that doth hedge Sir Wm. Blackstone."

In the autumn of the year (1857) in which he had brought out his now classical legal work Dr. Kerr again acted as deputy for Judge Johnes on the North Wales County Court Circuit. Nothing very remarkable occurred during this Circuit; even the incidents in an action tried before him at Cardiff in an action by a Welsh solicitor called by the common Welsh name of "Williams" against a person of the wonderful name of "Jerome Green Jones Green Pym ap Ednyfed" are not so. It is, however, worth noticing that Kerr, no mean lawyer, during this Circuit gave a definition of "When an election begins" that may be found useful in cases where more modern express definitions do not apply. He said: "An election does not begin until there are two or more parties seeking the suffrages of the electors. . . . An election means a choice between two or more parties."

During the time when Mr. Kerr was acting as deputy for Judge Johnes in the autumn of 1857 a curious incident happened. The late Commissioner, when Judge of the City of London Court, rarely, if ever, sent a witness for trial on a charge of perjury. It is the habit, indeed, of most experienced County Court Judges to hardly ever do this. No doubt a great deal of untruth is told, and much exaggeration takes place, in County Courts. Occasionally, too, it may happen that wilful and deliberate mis-statements of fact are purposely made. It is, indeed, obvious that wilful falsehoods, when sworn to, are perjury, and that this ought to be very severely punished when

As Deputy County Court Judge

proved—much more severely, indeed, in the writer's humble opinion, than it usually is. But the majority of the mis-statements made in County Courts, though put forward on oath, do not really amount to "wilful and corrupt" perjury. It is but human nature to take a highly-coloured view in favour of one's own case and to even persuade oneself, by continually brooding over a matter, that something was said or done which, in fact, never was. Many of the lower orders, in particular, have this faculty of persuading themselves that a thing happened which never really occurred at all. Again, imagination often plays a great part in these so-called "perjury" cases. For example, a man sees an incident in an accident—in other words, a part of it only. He persuades himself that he has seen the whole of it, and a ready imagination supplies the details he did not really see, but which he thinks "must" have happened, and that he therefore "must" have been seen. It is but a short stage further to half believe that they really all did happen, and that his eyes saw them occur. Arrived at this state of belief, it needs no effort nor straining of conscience to go into the witness-box and positively swear that the deponent actually saw what he, in truth, has only imagined.

Perhaps, however, Kerr's dislike to commit any one for trial on a charge of wilful perjury, though it is a dislike generally felt by all County Court Judges, originally arose from his having, during this Circuit, committed a party for perjury, and the Judge for whom he was sitting as deputy having afterwards similarly committed the other side! Of course, in

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such a case nothing could be done but that both prosecutions should be withdrawn!

In the beginning of 1859 (January) Kerr again acted as a Deputy County Court Judge; on this occasion, however, he was deputy for the County Court Judge of a Circuit which then comprised Daventry, Alcester, Coventry, Rugby, Solihull, Southam, Stratford-on-Avon, Warwick, Bromsgrove, Redditch, and Stourbridge. This was the last occasion of his acting as "deputy." For, in a few months subsequently, in the same year (viz., in March, 1859), came the contest which resulted in his being himself placed in a most important judicial position. The story of this contest must, however, be reserved for a new chapter.

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MR. COMMISSIONER KERR, ÆT. 73

Painted by his son, Charles Kerr, 1804.

CHAPTER IV.

THE FIGHT FOR THE JUDGESHIP OF THE SHERIFF'S COURT OF LONDON.

THE commencement of the year 1859 found Dr. Robert Malcolm Kerr, LL.D., now a man who had grown into public notice and was well known. He had, as we have seen in the preceding chapter, brought out three books on the Common Law Procedure Acts, which had each been favourably received by his profession and had rapidly become out of print. He had been on the popular side in at least one important case tried at Assizes. He had been a successful lecturer at the Incorporated Law Society. He had had conferred on him by his old *Alma Mater*, the University of Glasgow, the honorary degree of LL.D. He had, within a few months of its being bestowed, conspicuously justified the honour done to him, and the wisdom of the University's action, by editing with success an edition of a great legal classic.

Professional promotion of some kind might be justly expected to fall at no distant time to the lot of a man with such an early career. Yet there are, to this day, those who speak of him as though he

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were still an obscure barrister who obtained his promotion, when he got it, by a sort of "fluke" and by adroitly, at the last moment, obtaining the disqualification of his principal opponent. Their malicious story is believed by many of the younger generation, who give credit to those envious detractors. It therefore will be the business of this chapter to set the true story of the contest for the City Judgeship fully before the reader, and that, as far as possible, in the words of contemporary journalism.

Early in the year 1859 the Judgeship of the Sheriff's Court of the City of London fell vacant by the death of Mr. Michael Prendergast, Q.C. This gentleman was essentially a "City" man, and probably owed his appointment to that fact, and to political influence, rather than to any special aptitude which he had ever shown for a judicial position. The work of such a position in itself requires peculiar qualifications. To begin with, a man must be a thoroughly good lawyer; to go on with, he must, by nature, possess an impartial mind, capable of seeing both sides of a question and appreciating the full weight of each. It is better, especially in these days when many and long speeches are encouraged and the legislature has, by its enactment, multiplied their number, if he also possess considerable patience and good temper. In such a Court, however, as that which was the Sheriff's Court of London, and is now the "City of London Court," the nature of the business requires that the Judge must also be a man of considerable energy and able to get through a large amount of business with great despatch. The

The City Judgeship

union of all these qualities in one man is not common. They do not necessarily exist because a man is a relative of or friend of a great legal luminary, or is otherwise highly connected, even though he come of a famous legal stock or be a friend, or possibly even a relative or connection of a Lord Chancellor. Still less are they necessarily found in him because a man himself is a successful advocate, who is probably the more capable of enforcing his client's side of a question, the more blind he is to the existence of any merits at all on the other side. Mr. Michael Prendergast, Q.C., had certainly not been blessed with many of the qualities needed by a good Judge. Born in "Cloth Fair," somewhere towards the end of the eighteenth century, he had been educated at Merchant Taylors School; had proceeded to Cambridge with the Parkyn Exhibition; entered at Pembroke College; obtained an LL.B. degree; become a student of Lincoln's Inn; and been there in due course called to the Bar in 1820. His career as a Barrister during the thirty-six years he was in practice lay principally at the Old Bailey, and had hardly been striking. He had been a member of the Common Council of the City at one time; had subsequently been appointed to be Recorder of Norwich, and had been Chairman of a Bribery Commission, appointed after the election of 1832, to inquire into the doings of the old, and *not* immaculate, borough of Barnstaple, mentioned by Hallam the historian as if it were the nursery of the fine art of electoral corruption, practised in such a way as to avoid disfranchisement. In later life (viz., in 1856) Mr. Prendergast

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had been appointed Judge of a Sheriff's Court of the City. As a Judge we are told that "his eccentricities brought him into disfavour. But his judgments were marked by a righteous integrity, and it was seldom that either a plaintiff or a defendant suffered by his peculiarities." After a short illness Mr. Prendergast died at his residence at Highgate Rise on Sunday, March 19, 1859, at an age which was probably about sixty-two; for men of University education are on an average about twenty-four years of age when "called," and he had been thirty-eight years a member of the Bar.

The history of the Sheriff's Court, of which Mr. Prendergast had been, in 1856, chosen the sole Judge, is as follows: As every one knows, there are two Sheriffs for the shrievalty of the united jurisdiction of London and Middlesex. In the "good old days," when to be in debt appears to have been generally considered as a sort of crime, and accordingly subjected the debtor to imprisonment, each of the two Sheriffs had a "Compter," or gaol, of his own. The gaol of the senior Sheriff was the "Poultry" Compter, while that of the junior Sheriff was the "Giltspur Street" Compter. Even in those days prisoners for some alleged debt, which was not yet proved, could not be kept in gaol till the claim was tried. So the law provided means for effecting proper arrangements on which they might be meanwhile discharged. Judges were attached to each of the "Compters," or "gaols," to see judicially that the proper procedure for an alleged debtor obtaining release from imprisonment preceding the debt, be it by giving security for the

The City Judgeship

debt, or what not, was duly followed. From this origin the Court of a Sheriff everywhere grew to be practically a Small Debts Court. That of the Sheriffs of the City is thus described in the second Report, made in 1837, by the Commissioners appointed to inquire into municipal matters, at p. 129 :—

The Sheriff's Court is for all practical purposes divided into two Courts, one department being under the superintendence of each of the Sheriffs. In principle it is one Court holden separately at different places before the two Sheriffs, and consistently with this principle the style is "The Sheriffs' Court holden for the Poultry Compter, London," or "The Sheriffs' Court holden for the Giltspur Street Compter, London." It has been the invariable practice to consider the Poultry Compter as belonging to the senior Sheriff and the Giltspur Street Compter to the junior Sheriff, and the process in each division accordingly issues in the name of the Sheriff to whom that division is assigned. It is an ancient customary Court, and has cognisance of actions of debt, and all other personal actions at Common Law, arising within the City and its Liberties, and also of actions, founded on the customs of London and acts of Common Council. Ejectments appear to have been formerly tried in this Court, but no instance of an ejectment has occurred there for many years. It has no equitable or criminal jurisdiction. This Court is not confined to any particular description of suitors, but is equally open to Freemen and non-Freemen. The Sheriffs do not personally preside in the Court, nor do they ever in fact attend, though all the process issues in their names. Until lately, a separate Judge, or as he is called in the formal admission, an "Under-Sheriff" was always appointed to each division ; but a vacancy having occurred in the office of Judge for the Poultry Compter, about two years ago, it has not been filled up, in consequence of the intended improvements of the Court and, at present, one Judge acts for both divisions.

By the Common Law, the patronage of the judgeship of its Courts belonged to the City. London had only

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submitted to the Norman Conqueror upon the terms that its customs and its privileges, in this and other respects, should be respected and maintained. In 1859, the Corporation of the City, so far as concerned the patronage of the City Judgeships, enjoyed these under a statute (the London Small Debts Act, 1852), which confirmed and continued those Common Law rights of election. The same statute still regulates the Constitution and Jurisdiction of the Court, so far as they are not now governed (as it mostly now is) by County Court Acts and Rules thereunder made for the general regulation of County Courts. The Court itself is, however, by another statute (the changed name was first introduced by the County Court Act, 1867), now called "The City of London Court." The right of the Corporation to appoint the Judges in it was, however, taken away by a statute—the Local Government Act, 1888—passed under the auspices of a Tory Government. It, with a singular inconsistency, took away from the Corporation of London its ancient right to appoint to judicial offices, the salaries of which are paid by the City, while it at the same time expressly conferred the right to be magistrates upon the chairmen elected by the new County Councils established in other places. Parliament therefore appears to have hardly made up its own mind as to whether the appointment of Judges by popular election is a good thing or a bad one. The question has long been a vexed one. On this question, speaking generally, Liberal opinion has, in England, usually inclined somewhat towards trusting the people in this, as well as in other matters, while Tory opinion has for

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the most part leant in an opposite direction. By the American Constitution, Judges are elected, and need not necessarily even be professional lawyers, so that it stands recorded of one "Judge" that, after some sufficient experience of the Bench to enable him to definitely decide, he left it and returned to the more congenial and more lucrative calling he had previously followed—that of an umbrella maker !!

Probably, as is usual in most cases, the truth lies somewhere in the middle between the extreme view on either side. On the one hand, it cannot be right that either the appointment of a Judge, who, being entrusted with the administration of justice, has almost as sacred an office to fill as a clergyman, or that of a vicar or rector, should be made by popular election, conducted as at Common Law, with the almost necessarily accompanying incidents of bribery, intimidation, drunkenness, and every form of debauchery. On the other hand, it can hardly be doubted that the concentration of all the offices connected with the administration of justice in the one hand of one or even two party politicians—the Home Secretary and the Lord Chancellor—is not desirable, and might even, indeed, lead to grave constitutional danger. The political partizan selected to have the patronage of nearly all the judicial offices of the country placed in his hands is, moreover, always the Lord Chancellor of the day. Serious as may have been the indiscretions of individual Aldermen and Common Councillors, which will be presently pointed out, with regard to a Judge whose appointment lay in the hands of the Common Council, yet history shows that even

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Lord Chancellors, as a body, have not themselves been at all times free from well-merited reproach. Their actions, too, have at times been governed by actually corrupt motives, or by favouritism exercised on behalf of political or personal friends, or even members of their own families. Bacon, probably the greatest of them, if not indeed the greatest English intellect that has ever existed, was, whatever the merits of the matter may have been, actually condemned of having polluted the sources of justice itself, and accepted bribes for his decisions. Even if the condemnation was unjust, as some think it to have been, it is a striking proof of the inexpediency of trusting power of practically unlimited amount to even the greatest of human intellects. It is, again, not yet two centuries ago that another Lord Chancellor was condemned of actually selling or accepting bribes for the bestowal of judicial appointments in his gift. These grave offences formed the subjects of the impeachment of a Lord Chancellor in 1725. The unanimous judgment of ninety-three peers then convicted Lord Macclesfield of having committed them, notwithstanding that he was the personal favourite of the first of our Hanoverian monarchs (George I.). The existence of the office of Accountant-General in Chancery to this day remains a standing memorial to the dishonesty of this Lord Chancellor, and to the fact that Staffordshire in his day had the doubtful honour, as it was said, of having been the native county of the three biggest rogues of their day, in the persons of Sheppard, Jonathan Wild, and Lord Macclesfield! Within living memory, Lord

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Chancellor Westbury was driven into resignation of his high office by a condemnation by the House of Commons, if not of personal bribery, yet of having so habitually permitted family influences to dictate his appointments that his power of making them had been, sometimes, in violation of his high trust, corruptly exercised by them. Complaints against individual Chancellors that their powers of making appointments committed to them on trust for the public have been exercised by them in a manner suggested by family influences, rather than by consideration for the interests of the public, are, however, groundless—indeed only too often current. Perhaps, too, it is in the nature of things that Lord Chancellors, being the successors of the clerics by whom their high office was, in old days, always held, should retain some characteristic traces of early Christianity ; and that the one of these most conspicuous with some of them should, in old days, have been the scrupulous exactness with which they avoided falling under the apostolic condemnation which declares that he that provideth not for his own household is worse than an infidel ! Apart, too, from these considerations as to the probable personal weaknesses of individuals, professional politicians must always of necessity be a dangerous class to whom to entrust unlimited and unrestrained power. There ever must be a great temptation to party organizers, on the eve of, say, a critical division, to purchase a vote, if not in vulgar cash, as in the days of Walpole (when, notoriously, "every man had his price"), by pledging the honour of the party that its power to bestow

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some judicial office shall, at a future day, be exercised in favour of the individual who shows his nice sense of justice by bestowing his vote in support of the cause which is claimed to have it entirely on its side !

The middle course which is probably the best one for the satisfactory solution of the difficult question as to how patronage should be conferred, is undoubtedly that adopted as to the appointment of Recorder of London by the Local Government Act of 1888. This is that a person shall be nominated by one body—who will, if they are a popularly elected one, be wise to entrust their power of nomination to a committee of their body who are, by profession or otherwise, better qualified to judge technically between the rival qualifications of the different candidates than a promiscuous taken assemblage possibly can be—and that the nomination of the selecting body shall not take effect till it is confirmed by some third person, possessed of such technical and professional knowledge as enables him to form a sound judgment as to the merits of the selected candidate of whom he is asked to approve. This would appear to be the best mode in which judicial or semi-judicial offices should be filled. Such appointments would probably then be filled in a manner more universally acceptable to the public, and to the benefit of the public service, than they always are now, and individual merits would no longer, as they now often are, left unrecognised for political reasons, or even because their recognition would stand in the way of other and less meritorious claims, or it may be on account of some purely personal dislike. The vast legal patronage of

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the country, enjoyed by the Government of the day, might well be entrusted to a Representative Board of judicial personages, with the reservation of a power of veto to that Minister of the Crown who, if he pleases, can now monopolise for political partisans, friends, and even members of his own family, or those connected with it, a vast amount of patronage for which he is nominally, but not effectively, responsible to the Sovereign. Where a popular right to fill the appointment is allèged, a similar principle might also well be applied. Some day, perhaps, an Act of Parliament will be passed to effect the end suggested, and then the conferring of judicial offices will be no longer regarded by professional politicians as the legitimate spoils of victory, to be given to incompetent political adherents or to even less meritorious objects who owe their good luck to the accidents of birth and connection rather than to any exertions of their own.

The election to the Judgeship of the City of London Court necessitated by the death of Mr. Prendergast was made the opportunity for replacing him by the best possible man whom the Corporation could obtain to fill the post. It was conducted with an anxious care to properly supply the wants of the suitors and of the public which would favourably compare with any appointment that any Lord Chancellor ever can make under the conditions created by the Local Government Act, 1888, or even with any appointment that could be ever made at some time in the future under an ideal system such as has been just suggested for the exercise of the legal patronage by a specially appointed

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Board of Legal Patronage whose appointments were confirmed by the Lord Chancellor. There was, too, no lack of very competent applicants seeking the appointment.

Yet this election proved to be the last of an unbroken series of elections to the City Judgeship extending over centuries. The patronage was, as mentioned already, taken away from the City by the Local Government Act of 1888. Two grounds were put forward as justifying this deprivation of popular rights, neither of which appears to justify the act. One reason alleged was that the quarrels between the Judge and the Corporation, since the former's appointment in 1859, had become a public scandal. Now it absolutely cannot be denied that the action of some members of the Corporation of London itself, during the earlier part of this period, had no doubt been such that it had attracted general public attention. Without discussing here which side was right, or whether either was so entirely, it unfortunately cannot be denied that some members of the Common Council, although they had been warned of the probable consequences of their conduct by some of their fellows who were more mindful alike of both the Corporation's and the Judge's dignity, and of the real interests of the former, than they were—these persons, instead of addressing the Law and City Courts Committee when they had a supposed grievance to bring forward, and leaving matters wholly in the hands of that Committee, had unhappily insisted upon bringing about a discussion in public about every difference of opinion as to any matter, and upon every application made by the Judge

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for an increase of salary. Some of the Corporation, too, appeared to have forgotten that the Judge might well think that the enormously increased business of this Court gave him a moral right from time to time to have his salary equitably readjusted in proportion to the increased business, and consequently to the work imposed upon him. Moreover, the Common Council had not always contented itself with merely differing from the Judge of the Sheriff's Court on various details, but had even differed from its own committees. Yet, admitting all these things to have at one period taken place, the state of matters had been entirely altered for about nine years previously to that confiscation of the City's patronage which took place in 1888. The Corporation had, during all this last period, been content to leave matters to be adjusted between itself and the Judge by a competent committee of professional men chosen out of its own body, whose action it had uniformly endorsed.

Another reason, given at the time of the passing of the Act of 1888, for depriving the Corporation of London of its judicial patronage, was that it had made an evil use of it by making bad appointments. The one solitary occasion on which it had made an appointment which could be thus characterised was that it had filled a judicial office by electing a gentleman to it on the supposed strength of his having shown great ability by writing a law book on a subject which commanded much public attention at the moment. The book had, amongst the host of others which simultaneously appeared on the same subject

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in truth, attained some success, if not that which it had been hoped for it. Its writer, however, did not, on the Bench, succeed in obtaining the confidence of the public—largely, perhaps, because he was too honest and too diffident: instead of “ruling” in a bold and peremptory fashion, and in a loud voice dictatorially insisting on the correctness of his own views, he sometimes allowed it to be seen that he felt conscientious doubts, and would even seek, in a somewhat timid fashion, to get his views confirmed by others. But this mistake on the part of the Corporation (even if it was one) had been speedily set right by the City, in a manner not only creditable but highly to the honour both of itself and of the gentleman who had been appointed. His action, so soon as it was made known to him that his administration of justice did not command public confidence, was the same as it once fell to the writer's lot to learn had been taken by a late well-known judge. In this latter case, also, it had become imperative for his real friends to convey to a distinguished jurist and Judge, not at all times a man of gentleness of demeanour, that the public press was at least questioning his judicial capacity, and was calling in unmistakable terms for his retirement from the Bench. Several of them had, in anticipation of “a scene,” assembled in a country house between a certain Saturday afternoon and the following Sunday, during which it was arranged that the disagreeable communication should be made. In each case the intimation necessary was gently conveyed to the judicial personage whose capacity was in question, that the administration of public justice would be

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more satisfactory, in the eyes of the world, if his place in it were filled by some one in whom greater confidence was generally felt than it was in himself. It was no sooner made than the person indicated at once calmly determined, of his own good sense, that, under the circumstances, it would be far better, alike for maintaining the confidence almost invariably felt in Courts of Justice in this country, and for himself, that he should no longer occupy the judgment seat. In both cases those concerned arranged that a handsome pension should be provided for the retiring Judge. In both cases, the arrangement was carried out without any "scene" or scandal, in a manner which reflected the highest credit upon all concerned. Any justification on this ground for what was done in 1888 fails as completely as the other alleged ground which has been already mentioned to have been put forward.

The incidents connected with the last election, in 1859, of a Judge of the Sheriff's Court will, under the circumstances, be presently set out in some detail. For they play an important part in the history alike of the City, and of the not undistinguished individual who proved to be the last of the Judges elected solely by the choice of the City, whose career it is the object of these pages to outline.

The confiscatory clauses in the Local Government Act of 1888 were unfortunately introduced hastily, during the passage of the Bill through Parliament. They appear not to have been the subject of negotiation and arrangement with the Corporation. By an amendment, rights of appointment which had long survived were suddenly, without warning, confiscated

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to "the Crown." The so-called rights of "the Crown" thus created are really now exercised through and by the Lord Chancellor of the political party in power when a vacancy occurs, as being the Minister generally responsible for the selection of those by whom public justice is to be administered. The City, which of late years has closely entrusted itself to Conservative partizans, and given politicians of that side in politics the monopoly of the preservation of its rights, found itself compelled to join in chorus with "Save me from my friends!" Irish landlords and publicans.

Fears lest some legislation such as that which took place in 1888 would one day deprive the Corporation of the power of appointing its judicial officers, had begun to exist even in 1859. The citizens of London were, at the earlier date just mentioned, naturally jealous of and anxious to retain the privilege of making its own judicial appointments, which had been possessed in Anglo-Saxon days, and had been successfully defended and retained during alike the Norman Conquest of 1066, and the struggles both during the Commonwealth and of the Revolution. That some grave apprehension on this score existed even in 1859 is however evident from an article which appeared in the *City Press* of April 2nd in that year in the terms following :—

THE VACANT JUDGESHIP.

Before the Municipal Corporation Reform Act of 1835 all the boroughs of England and Wales enjoyed the privilege of electing the Judges of their own Courts. The transference to the Crown of the right of nominating these important officers in the Boroughs to which the Act applied was one of the chief alterations effected by

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that important statute. It was a change loudly called for. The taint of jobbery and corruption which pervaded the Borough management in general had extended to the appointment of those who were charged with the administration of justice, and it was hoped, anticipated, and intended that the nomination of the local Judges by the Crown would be free from the nepotism and other objectionable features of the elections of the Town Councils. The anticipations of the Reformers have been fully justified, for, except in one or two instances, the appointment of recorders and stipendiary magistrates by the Home Secretary have been altogether unobjectionable in themselves and satisfactory to the public. The reason is obvious. The Home Secretary is responsible not only to the House of Commons, but, what is of more importance, to public opinion, a responsibility the nature of which may be gathered from what occurred in the recent case of Mr. Higgins, who resigned an office of £2,000 a year rather than have his appointment discussed in the House of Commons. The City of London was excepted from the operation of the Statute of 1835, its reform being reserved for separate legislation, a distinction—if distinction it may be called—obtained as much by its own importance as by its influence in the House of Commons. That reform has long been impending, but the opportunity of obtaining it from what were considered friendly hands seems now to be permanently lost, and it may not unreasonably be expected that the longer the measure is postponed the more extensive and radical will be the changes effected by it when it comes. We are so much the friends of municipal independence and so anxious to preserve our right of local self-government, that we desire and indeed hope to see the Corporation of London itself effect most of the reforms in its constitution which have become necessary. It may be that on some points the aid of the legislature may be necessary, and if so this aid will be readily obtained, but if the Corporation wishes to keep its reform in its own hands, it must show that the powers it possesses will not only not be abused, but on the contrary that they will only be exercised in the way most beneficial to the public.

These remarks have been called forth by what has appeared in the past week in the columns of the daily press with reference to the vacant Judgeship of the Sheriff's Court. To the maxim "*De mortuis nil nisi bonum*" we desire scrupulously to adhere. We will say nothing derogatory of the late Mr. Prendergast, but we think we

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express a very general feeling when we observe that the appointment to the Judgeship of the Civil Court of a gentleman whose practice has been almost entirely confined to the Old Bailey was a mistake on the part of our City Council. Our object at present must not be misunderstood. We have no wish to guide or indeed to attempt in any way to influence the choice of the Common Council. Our wish is simply to call the attention of the Corporation to the importance of the duty which has just devolved upon it. With its many faults it deserves, and we believe possesses, the credit of having with rare exceptions made excellent selections of its judicial officers. The present Recorder, who by the way entered the service of the Corporation as Judge of the Sheriff's Court, is an accomplished lawyer, and a more able Judge does not sit on any Bench. The Common Serjeant has not as yet been fully tried, but he promises to be in all respects an equally creditable appointment. The Common Council must take care to provide for these gentlemen an equally well qualified colleague.

We do not for a moment suppose that any attempt is likely to be made in any Bill which may be introduced for the reform of the Corporation to transfer the judicial offices to the Crown. But we confess that we do not depend implicitly on the reticence of the hundred or so Barristers in the House of Commons, all of whom have an indirect interest in increasing the legal patronage of the Home Secretary, who is not less anxious to obtain for himself the means of closing the mouths of his clamorous supporters. Distant as the danger may seem, it must always be borne in mind that the ancient Anglo-Saxon system of electing Judges was practically confined to the City, is altogether an exceptional case, and in our legal constitution an anomaly, the Crown being the spring and source of justice and therefore invested with the right of maintaining the Judges by whom it is to be administered. One or two failures on the part of the Corporation to select proper persons to fill its judicious offices must inevitably lead to public complaint, (which has already indeed made itself heard in the Court of Common Council), and the only remedy likely to be suggested would be the precedent afforded by the Act of 1835, a precedent which a great many of our legislators are interested in following. With these views, it is with a feeling of regret that we see committees formed to secure the return of a Judge, because the election of so high a functionary ought to be carried out with the utmost disregard and

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repudiation of every local or party interest, and we earnestly hope that the committee of Officers and Clerks to whom an inquiry as to the nature, duties, and emoluments of the vacant office has been referred will give the subject their most careful and anxious consideration. The importance of the inquiry can scarcely in our opinion be exaggerated, and for various reasons it is one not only of present but of permanent interest in our great commercial community.

Many bearers of names well known and famous in English history had in past days been willing to serve as Judges of the Sheriff's Court of London. Thus, amongst those who have actually held a Judgeship of the Sheriff's Court, are Sir Thomas More, who was Judge of the Giltspur Street Compter in September, 1510; Sir Thomas Coventry, the outrage upon whom was the cause of the well-known "Coventry Act;" and more recently, Russell Gurney, who afterwards became an excellent Recorder of London, and one of the best it ever has possessed. Amongst the names of those who were at one period in life unsuccessful candidates for the office of a Judgeship of the Sheriff's Court may be mentioned that of the great Lord Bacon.

As is usual in the City of London, on a vacancy occurring in an office, on the death of Mr. Prendergast it was referred to the Officers and Clerks Committee to inquire into the nature, duties, and emoluments of the office of Judge of the Sheriff's Court. The report brought up on this reference simply recommended that there should be no alteration in the office and that the salary should remain as heretofore—namely, £1,200 per annum. This report was received on April 15, 1859.

It was greatly to be regretted that the report

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merely fixed the salary of the office and omitted to lay down any principle upon which that salary then was, or ought in future to be, calculated in some manner that it would always be proportionate to the work of the Court. £1,200 per annum was fixed as the proper salary of the office. It may, however, be usefully explained here that £900 of the £1,200 per annum was to be paid as remuneration for the work of the Sheriff's Court, while the remaining £300 per annum was payable for the discharge of the statutory duties of attendance at the Old Bailey, which an Act regulating that tribunal imposed upon any Judge of the Sheriff's Court. As the earnings of the Sheriff's Court were at that time about £4,000 a year, the proper salaries payable for the discharge of its judicial work were obviously taken at about nine-fortieths of the fees earned. Much trouble in after years would have been avoided if this report had clearly and definitely laid down this basis of payment. The same proportion was again arrived at in 1899, when, the fees of the Court having increased to five times what they were in 1859, five times the salaries then fixed were reported to be the proper ones to be paid.

Perhaps, however, the explanation is that no one at that time contemplated that the business of the Sheriff's Court, would ever be substantially increased. Indeed it is a curious comment upon the state of things which at that time prevailed that, upon the report being brought up, one of the members of the Common Council said that "for himself, he thought that the office was a sinecure one, and ought not to be filled up, but that the duties should be performed by

City Judgeship Candidature

the Common Serjeant." This view was, however, not accepted.

Within a few days after the death of Mr. Prendergast, Dr. Robert Malcolm Kerr had announced himself to be a candidate for the vacant post, as he was well entitled to do alike by his judicial experience and position both at the Bar and as an author. He made known his candidature by a circular dated March 22, 1859, which is perhaps worth reprinting here, as it affords conclusive evidence that the writer "had little connection with the Corporation," and rested his application upon merits alone, and not upon any personal influence possessed by him with any of the City authorities :—

I beg leave respectfully to offer myself as a Candidate for the vacant office of Judge of the Sheriff's Court. I cannot but feel that, enjoying but little connection with the Corporation, I may be thought chargeable with some presumption in so doing, but I have confidence in the care and impartiality with which you select the officers who are to be charged with the administration of justice in the City Courts, and this confidence is my best justification and truest claim to your support.

This introductory circular was accompanied by another of the same date (March, 1859) in which Mr. Kerr described his claims and qualifications to fill the office which he sought. This accompanying circular, read in conjunction with his application for the office of Common Pleader, furnishes a tolerably complete outline of the writer's life up to the year 1859. It is therefore of some interest, and may accordingly be set out in full. It was as follows :—

So many friends among those on whom I have waited during the past week have pointed out to me that you have been furnished with

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no materials on which to form a judgment as to my fitness to fill the vacancy caused by the death of Mr. Prendergast, that I am reluctantly compelled to abandon my previous resolution, and to state what I consider my qualifications for the office of Judge of the Sheriff's Court.

I was called to the Scottish Bar in 1843 and to the Bar of England in January 1848. I have since been uninterruptedly engaged in the practice of my profession in London and on the Northern Circuit, devoting my leisure during these years to the preparation of various legal works.

In 1852 I published an edition of the first "Common Law Procedure Act" a practice in fact of the Superior Courts of Law which soon ran through a second edition and has been long out of print.

In 1853 I wrote a work called *An Action at Law* which soon became a handbook for legal students, a second edition having been called for and published in 1855. In 1854 I edited the second "Common Law Procedure Act," which like its predecessor is now out of print. In November, 1855, I had the honour of being elected Lecturer on Common Law and Criminal Law to the Incorporated Law Society of the United Kingdom, and I held that appointment for the usual period.

In 1857 I prepared for Mr. Murray, of Albemarle Street, an edition of Sir William Blackstone's *Commentaries on the Laws of England*. This work has been adopted for the examinations of students in the Inns of Court and in the University of Cambridge.

It is an inflexible rule with the Judges, and for very obvious reasons, to refuse testimonials to members of the Bar applying for office in England. To these learned persons therefore it would be improper to refer, but I have placed in the hands of my friends communications from Sir Richard Bethell, Sir Henry Keating, Sir Fitzroy Kelly and other distinguished persons in the profession to which I belong. I have been pressed to publish these letters, but intentionally confine myself here to those facts which I venture to think justify my application to you.

I may add that since 1851 I have frequently acted as Deputy Judge of the County Courts in various parts of England, so that I am perfectly familiar with the judicial duties which will devolve on the gentleman who will have the honour of being elected by you to fill the very important office for which I have respectfully sought your suffrages.

City Judgeship Testimonials

About a month later than the date of his March circular the keenness of the contest, and the success which he had met with in his canvass, induced Dr. Kerr to obtain and publish testimonials from several very eminent members of the legal profession of his fitness for the post. It is interesting to read these now, viewed by the light of the subsequent careers both of their writers, and of the person in whose favour they were written. So they will be fully set out here. Two of the writers were distinguished Lord Chancellors, exceptionally great even amongst the race of legal giants who reach that position ; the list also comprised with the last of the Chief Barons, a Judge of the Court of Common Pleas, a County Court Judge, and a distinguished jurist and ecclesiastical lawyer and classic. Kerr did not come to the City without high recommendations :—

CANNES, April 12, 1859.

Lord Brougham feels bound to give his strongest testimony to the legal talents of Mr. Kerr and his extensive and accurate practical knowledge. The works which he has published are of the greatest service to the profession. Lord Brougham feels assured that the heads of the profession would join in this testimony were they not prevented by the judicial etiquette.

HOUSE OF LORDS, March 25th.

DEAR SIR,—I am glad to hear that you are a Candidate for the office of Judge of the Sheriff's Court, and I have great pleasure in stating my belief that you will discharge the duties of that office with great credit to yourself and with much advantage to the public. The experience you have already had as a deputy County Court Judge is, in my opinion, a very important circumstance in your favour.

With my best wishes, I am,

Yours faithfully,

RICHARD BETHELL.

R. Malcolm Kerr, Esq.

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32, DOVER STREET, W., *March 24, 1859.*

MY DEAR SIR,—I have great pleasure in testifying that I consider you every way qualified in point of intellect, learning, and capacity, to become a Judge of the Sheriff's Court. I have not had many opportunities of becoming acquainted with your actual practice in your profession, but I trust that the assurance which I have now given you in perfect sincerity may prove of some service.

I remain, very truly yours,

FITZROY KELLY.

R. Malcolm Kerr, Esq.

THE ATHENÆUM, *March 26, 1859.*

DEAR KERR,—In answer to your intimation that you are a Candidate for the office of Judge of the Sheriff's Court, and your wish that I should state my opinion of your fitness for that office, I have great pleasure in saying that I think you exceedingly well qualified to perform the duties of that office with credit to yourself and benefit of the public.

Very truly yours,

HENRY S. KEATING.

R. Malcolm Kerr, Esq.

33, GLOUCESTER PLACE, HYDE PARK, *April 20, 1859.*

DEAR SIR,—I observe that you are a candidate for the Judgeship of the Sheriff's Court. If it may be useful to you it is only proper it should be known that you have several times acted as the Judge in my absence of the County Courts in my district, and that your administration of justice has, as I have every reason to believe, invariably given the utmost satisfaction to the suitors, the profession, and the public.

I shall be exceedingly glad to hear that you have the appointment you aim at, and with my sincere wishes on account of the City and yourself,

I am, dear Sir,

Your faithful servant,

J. HERBERT KOE.

Robert Malcolm Kerr, Esq.

MY DEAR KERR,—I cannot imagine a person better able to serve the public in the situation you desire to attain than yourself. You have given proofs of indefatigable industry, and a thorough knowledge of your profession in practice as well as theory.

Judgeship Testimonials

To these recommendations for such an office you add a very good temper and a clear head. In the discharge of my duties I have frequently had occasion to consult your edition of "Blackstone," and have never done so without advantage and satisfaction.

With earnest wishes for your success, believe me,

Always and truly yours,

J. G. PHILLIMORE.

Shiplake, *April* 11, 1859.

One of the writers of a testimonial for Dr. Kerr had somewhat characteristically also given a testimonial to another candidate.

Whether it is permissible, or "good form," even if it can be allowed, to give a testimonial to one candidate for an appointment, and another to a different candidate, is still sometimes debated. But the fact that Sir Fitzroy Kelly did so, when Attorney-General of the day, furnishes an important precedent which other Barristers are clearly at liberty to adopt if they so please. It is not remarkable that a testimonial from Lord Brougham was amongst those submitted by Dr. Kerr; for Lord Brougham must have known a good deal of Dr. Kerr through the latter's father-in-law, Charles Knight,¹ and, on a later occasion,² paid him a handsome compliment in the House of Lords. Political feeling in the City against Lord Brougham had now ceased to run as high as it once did, and a testimonial from Lord Brougham had become in 1859 not unlikely to command some respect and weight in the City of London, and was by that time at least not likely (as it would have been at some earlier dates) to

¹ See *ante*, p. 22.

² See *post* at commencement of Chap. X.

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prejudice the cause of the person in whose favour it was offered as identifying him a little too closely with the Radical interest ; but it would have been strange if one were wanting.

Some of the best-known members of the Bar became candidates for the office of Judge of the Sheriff's Court. There was no lack of competitors for it. The *City Press*, as early as April 9, 1859, was able to give a list of the Candidates, subsequently superseded by that set out below.

On the eve of the election, the following complete list of the candidates for the appointment, and of their various qualifications, appeared in the *City Press*.—

CANDIDATES FOR VACANT JUDGESHIP.

In answer to numerous inquiries as to the qualifications of Candidates, and to meet the wish of the general public for precise information as to the competition for the appointment, we have arranged the following list of Candidates, and appended a few notes in explanation of their several antecedents, and the grounds of their appeals for support.

We have placed their names in alphabetical order, and quoted with regard to each only the most prominent points which are set forth in the addresses.

Cooper, William, 3 Hare Court, Temple. Practised twelve years in the Nisi Prius, Central Criminal and other Courts.

Corrie, William, fifteen years a member of the Northern Circuit, some years magistrate of the Metropolitan Police Courts. References allowed to the Chief Baron of the Exchequer, Sir Samuel Martin, Sir G. W. Bramwell, Sir W. H. Watson, Sir W. F. Channell, Sir W. Wightman, Sir Charles Crompton, Sir J. S. Willes. Once a candidate for the office of Chief Justice of Bombay, and then had testimonials from Sir George Grey, Sir Fitzroy Kelly, J. A. Roebuck, Esq., M.P., J. Rolt, Esq., M.P., Gathorne Hardy (then Under-Secretary of State), W. Atherton, Esq., M.P., and Right Hon. E. Cardwell, M.P.

Competitors for Judgeship

Finlaison, W. F., fifteen years in practice at the Bar and frequently at the House of Lords, author of *Leading Cases*, 1847; editor of *Lawyer's Companion*, *Common Law Procedure Acts*, *Nisi Prius Reports*, *Charitable Trusts Acts*, &c.

Foster, Gregory, 1, Pump Court, Temple. Many years member of Home Circuit. Many years Deputy-Judge of one of the Metropolitan County Courts. Will submit testimonials if required.

Kennedy, Charles Rann, Temple. We have received Mr. Kennedy's short address, but not his testimonials.

Kerr, R. Malcolm, 2, Inner Temple Lane. Called to Scottish Bar in 1843, to English Bar in 1848; engaged on Northern Circuit; author of *An Exposition of the Common Law Procedure Act*, 1852, *An Action at Law*, 1853, lecturer on Common Law and Criminal Law to the Incorporated Law Society, 1859. Edited Blackstone's *Commentaries*, 1857; since 1851 frequently acted as Deputy-Judge of County Courts in various parts of England. Has testimonials from Sir R. Bethell, Sir H. Keating, Sir Fitzroy Kelly, &c.

Morris, William, 10, Lincoln's Inn. Has practised at the Bar thirteen years; no testimonials sent.

Payne, William John, 2, Serjeant's Inn. Called to the Bar in 1842, joined Northern Circuit and Buckinghamshire, Suffolk, London, and Middlesex Sessions; acted as Deputy-Coroner for London and Southwark in 1857, appointed Coroner for the Duchy of Lancaster in the Home Counties.

Pulling, Alexander, 2, Crown Office Row, Temple. Fifteen years called to the Bar; has practised much in the Superior Courts and Criminal Courts; frequently acted as Judge of County Courts; has been twice a candidate for Common Pleadership and for the office of Common Serjeant; author of *The Laws, Customs, and Privileges of the City of London*, 8vo.

Simon, John, barrister of fifteen years' standing.

Sleigh, W. Campbell, Temple. Has not published an address.

Stammers, J., 123, Chancery Lane. Twenty-five years' practice at the Bar in almost every Court, including the House of Lords' Privy Council, and Courts of Common Law, Assizes, and Sessions.

Thomas, Ralph, 1, Serjeant's Inn. For the past seven years in commission as Serjeant-at-Law; has frequently acted as Judge in Criminal Courts to assist Her Majesty's Judges. Testimonials from Sir Fitzroy Kelly and Mr. William Shee.

Wood, Charles William, 1, Hare Court, Temple. Called to the

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Bar in 1843; has practised as Special Pleader in the Superior Courts of Common Law, and also belonged to Home Circuit, and some time member of the Surrey Sessions. Was a candidate for the office of Common Pleader in 1850, when the Common Council abolished the office.

The *City Press* also simultaneously published an article which shows how great was the anxiety of the City to prove itself worthy to exercise judicial patronage and that the best of the many candidates should be appointed. It said:—

THE VACANT JUDGESHIP.

With the object of assisting, as far as we can, the deliberations of the Common Council in arriving at a right conclusion, and also with the further view of informing the public, we have supplied an alphabetical list of the gentlemen who have offered themselves as candidates for the office of Judge of the Sheriff's Court. This list, and the qualifications there stated, have been compiled from the applications of the candidates themselves, their own language being in most cases adopted.

If we say that in the competition which has ensued most of the candidates are, in sporting language, "nowhere," we only state the inevitable result of so many having started in the race. When we add that, according to the best information we have been able to obtain from different sources, the contest is already beginning to be narrowed, we state only what is probably already known to most of those with whom the selection lies. The gentlemen who at present occupy the most favourable position possess very different qualifications for the office they severally seek, and, in making their choice, it will be for the Common Council to decide what are really the necessary and proper qualifications in a Judge of the Sheriff's Court. On this question we refrain, for obvious reasons, from offering any opinion whatever.

We have learned, incidentally, that the Committee on Officers and Clerks do not intend to recommend any change in the nature, duties, and emoluments of the office. We are not surprised at this, for, except in the matter of emolument, no change can, we believe,

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be effected without the aid of an Act of Parliament. The mode of appointment of a Judge of the Sheriff's Court—his qualifications, viz., being a barrister of seven years' standing—and the jurisdiction and procedure of the Court are all regulated by a statute, obtained for that purpose some few years ago. It is, however, enough to state here that the Sheriff's Court is, in effect, the County Court of the City of London, having jurisdiction for the recovery of debts and demands up to £50; that upwards of thirteen thousand causes are annually disposed of (an average, it will be observed, exceeding one thousand a month), and that the Judge has a salary of one thousand per annum. It ought, perhaps, to be stated that when the present Recorder was Judge very nice questions of law were raised in this Court. It would obviously be an immense advantage to our merchants and traders to be able, at all times, to obtain without delay and at a trifling cost the authoritative opinion of an able commercial lawyer, the more especially when that opinion is formed after hearing the arguments of both of the parties interested in the determination of the question in dispute; and, accordingly, this was so much felt that the nicest and most difficult questions were frequently left to the determination of Mr. Russell Gurney as Judge of the Sheriff's Court, this decision, it will be recollected, being final. The statute which created it at the same time directed who should be the Judges of the Central Criminal Court. They are the Lord Mayor and Aldermen, the Lord Chancellor, and all the Judges of the Superior Courts of Common Law, the Chief Commissioner of the Court of Bankruptcy, and the Recorder, Common Serjeant, and Judges of the Sheriff's Court. It is by the statute that the Judge of the Sheriff's Court is enabled to act as a Commissioner at the Old Bailey. To induce him to undertake that duty the Corporation pays him £300 per annum, thus making the office now vacant worth £1,200 a year. The civil duties of the Judge of the Sheriff's Court (looking at the salary) seem, therefore, to be, in the estimation of the Corporation, three times more important to the community than those which devolve upon him as a Commissioner at the Old Bailey. This much of the nature, duties, and emoluments of the vacant office. Other matters worthy of consideration in reference to it may suggest themselves, and we may, therefore, return to this subject unless, as we truly anticipate, the election takes place on Thursday next, immediately after the adoption of the Committee's Report. We feel perfectly satisfied that, in the opinion of the Court

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of Common Council, as in that of all of our readers, nothing can be more important than securing, by the appointment of a gentleman of reputation, learning, and experience, the proper administration of justice in the Courts of the City of London.

On the very day appointed for the election Dr. Kerr "took up" the freedom of the City, as he records in a note of that fact made by him on a document which is subjoined, formally recording that fact, "so as to be eligible as a candidate for the Judgeship." This formality was required by the standing order of the Court of Common Council and was accordingly complied with by Dr. Kerr. The excellent report of the proceedings which appeared in the next day's *Morning Advertiser* showed, however, that this standing order had afterwards to be dispensed with to meet the case of one candidate—Mr. Cooper, who disappeared on the first show of hands which was taken. The formal document on which the cautious Commissioner has made the memorandum is itself in the terms following :—

I, R. M. K., do solemnly declare that I will be good and true to our Sovereign Lady Queen Victoria ; that I will be obedient to the Mayor of this City ; that I will maintain the Franchises and Customs thereof, and will keep the City harmless, in that which in me is ; that I will also keep the Queen's Peace in my own person ; that I will know no gatherings nor Conspiracies made against the Queen's Peace ; but I will warn the Mayor thereof ; or hinder it to my power : and that all these points and articles I will well and truly keep, according to the Laws and Customs of this City, to my power.

R. M. K.

*The foregoing Declaration was made and
subscribed at the Guildhall of the City
of London this 5th day of May, 1859,
before me, J. SEWELL.*

Incidents of Election

Thursday, May 5th, had long previously been appointed as the day on which the election to the Judgeship was to take place. The scene in the Council Chamber was most excited. About seven-eighths of the entire Court was present, numerous strangers were present, and the whole of the sixteen candidates appeared duly robed and wigged. It was first resolved that the usual standing order as to the rotation of business should be dispensed with and the candidates reduced first to six and then to two by successive shows of hands, and that a poll should be taken as between these two. Then it was unanimously resolved that every person who had ever been insolvent should be disqualified. It is upon this flimsy foundation that there has been founded the idle tale before alluded to that Dr. Kerr's election was due to the trick of his having disqualified his principal opponent by a technical objection taken at the last moment. Not only was the disqualification revived unanimously by the Court at the very commencement of the proceedings, but only one candidate could in any case have been disqualified by it, and he had not considered his chances of success to be sufficiently good to justify him in issuing an address.

The sixteen candidates reduced themselves to eleven before any show of hands was taken. The eleven left were Messrs. (1) Pulling, (2) Serjeant Thomas, (3) Corrie, (4) Kennedy, (5) Morris, (6) Foster, (7) Gregory Foster, (8) Finlaison, (9) Kerr, (10) Cooper, (11) Payne. The first show of hands reduced the number of candidates to Nos. 1, 2, 3, 9.

Commissioner Kerr

A further show of hands resulted in only two candidates, viz., Mr. Corrie (No. 3) and Dr. Kerr (No. 9), being left to compete by poll for the appointment.

This poll, it was decided, should last for an hour only. It accordingly commenced at twenty minutes before four and was really concluded at twenty minutes past four, though it was not formally closed till the expiration of the allotted hour. Its result had become known long before it was finally closed, but at the agreed hour, viz., twenty minutes to five, it was formally announced by the Lord Mayor (Alderman Wire), that Dr. Kerr was elected by a majority of two, the numbers being as below :—

For Kerr	...	...	...	...	...	102
For Currie	...	...	...	...	...	100
						<hr/>
Majority for Kerr	...	...	...	...	...	2

We learn from the report in the *Morning Post* of the next day but one after it, that the Lord Mayor, having declared Mr. Kerr duly elected, that gentleman suitably acknowledged the honour which the Court had conferred upon him, and that Mr. Corrie also thanked his supporters in appropriate terms.

Mr. Corrie, the candidate who came within two votes of the Commissioner, was identical with the gentlemen who, not long subsequently, became City Remembrancer. He was a "Citizen and Spectacle Maker," and his other qualifications have been described on a previous page.¹ Elected to his office in 1864, he held it until 1878.

¹ See *ante*, p. 98.

Result of Election

A detailed account of the election to the Judgeship was given in the next issue of the *City Press* in the terms following :—

The Court then proceeded to elect a Judge of the City Sheriff's Court, rendered vacant by the demise of Mr. Prendergast, K.C.

The following gentlemen were severally nominated as candidates: Alexander Pulling, Esq., Mr. Serjeant Thomas, Malcolm Kerr, Esq., William Morris, Esq., T. Campbell Foster, Esq., Gregory Foster, Esq., W. H. Finlaison, Esq., W. Corrie, Esq., W. Cooper, Esq., John Payne, Esq. In accordance with the resolution of Mr. H. L. Taylor, as given above, the number of candidates was reduced to six, and, upon a show of hands being taken, the Lord Mayor declared the six successful candidates to be Messrs. Pulling, Serjeant Thomas, Kerr, T. C. Foster, Finlaison, and Corrie. The number was then further reduced and Messrs. Finlaison, T. C. Foster, Serjeant Thomas, and Pulling, were successively placed in a minority. The contest was consequently left between Kerr and Corrie. The election then took place by poll, which opened at twenty minutes to four, and closed at twenty minutes to five o'clock precisely. During this period the utmost excitement prevailed, both inside and outside the Court. The Scrutineers, Mr. Deputy Obbar and Mr. J. E. Saunders, at the close of the poll, announced the numbers to be as follows :—

For Mr. Kerr	...	...	...	...	102
For Mr. Corrie	...	...	...	...	100
					—
Majority for Mr. Kerr	...	...	...	...	2

The result was received with much cheering.

The Lord Mayor, having officially stated the numbers, declared Mr. Malcolm Kerr duly erected Judge of the City Sheriff's Court.

Mr. Kerr, who seemed much moved, then returned thanks, and assured the Court that no effort, no desire, and no labour should be wanting to justify the choice which they had made (cheers). Mr. Corrie briefly addressed the Court, and thanked the members who had kindly voted for him.

The *Morning Advertiser*, May 6, 1859, contained a somewhat fuller and more graphic report of the

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proceedings than has hitherto been given. It was as follows :—

Yesterday a very numerously attended meeting of the members of the Court of Common Council was held in their Chamber at the Guildhall, the Lord Mayor presiding.

The agenda paper showed a vast amount of public business—far more indeed than usual. By one o'clock, the hour appointed for the meeting of the Court, the strangers' gallery was filled. His Lordship having appointed yesterday for the election of a Judge for the Sheriff's Court, a High Bailiff for Southwark, and a City Carpenter, the interest excited was intense throughout the whole of the proceedings. It will be perceived, however, that only the Judge was elected. Mr. Catty, the newly appointed principal clerk in the Town Clerk's Office, read the minutes of the former Court, in the midst of great impatience and confusion. They were agreed to as having been correctly transcribed. The ordinary business of a preliminary character was disposed of without comment.

After the reference of a petition . . . to the Bridge House Estates Committee, the members of the Court proceeded to the election of a Judge of the Sheriff's Court. During the course of several years' experience in the proceedings of this Court, we never witnessed such a scene of excitement as prevailed on this occasion. About seven-eighths of the whole Court were present, both aldermen and commoners. The gallery was literally, and the avenues from the lobby completely, choked. The candidates were announced to be sixteen in number, the whole of whom appeared in their wigs and gowns, in accordance with their position at the Bar. The members of the Court evidently appeared to feel the responsibility of the duty which rested upon them in the disposal of so important an office as that of Judge of the Sheriff's Court, and in criminal cases at the Old Bailey, and it will be seen from the following details that they were anxious to guard against anything like an improper disposal of the office. The first step which was taken was the adoption of a Motion proposed by Mr. H. L. Taylor and seconded by Mr. Ross, but opposed by Deputy Lott, who thought the more just way would be a simultaneous nomination of the candidates. Mr. Taylor's Motion was as follows: "That the seventh standing order be suspended upon the occasion of election of Judge of the Sheriff's Court, and that the number of candidates for the said office be reduced to six, by show-

Press Descriptions of Election

of hands, that they be then further reduced *seriatim* to two, and that the Court do then proceed to the election by poll." Immediately after this had passed, the Lord Mayor suggested that the whole of the candidates should be called to answer their names and appear before the Court. It was agreed that this form should be observed, but Mr. Abraham having a notice upon the paper which formed a text of eligibility, it was decided first to dispose of that. Mr. Abraham consequently moved,¹ both Mr. Barkley and Mr. Gammon rose to second the motion, and both claimed having done so. The proposition was unanimously carried. The names of the several candidates were then submitted, but eleven only appeared and took their seats at the left hand of the Lord Mayor. The following is a list of their names, in the order of proposition, viz.: Messrs. Pulling, Serjeant Thomas, Corrie, Kennedy, Morris, Foster, Foster (Gregory), Finlaison, Kerr, Cooper, and Paine. The inquiry whether they were free having been put, Mr. Cooper said he was not. Whereupon, the standing order requiring all candidates to be free of the City was suspended, upon the motion of Mr. Ross, seconded by Mr. C. Young. The Court then proceeded to reduce the eleven candidates to six, in accordance with the terms of Mr. Taylor's Motion, when the following result appeared: The names of Messrs. Pulling, Thomas, Kerr, Foster, J. W. Finlaison, and Corrie were retained. The reduction to two left the names of Mr. Kerr and Mr. Corrie as the sole competitors. The Lord Mayor directed that the final issue should be the result of a poll, to last one hour and no longer. At twenty minutes to four o'clock such poll began, being continued until 4.20. The way in which it was taken was as follows: The Town Clerk read first the names of the Aldermen, according to their seniority, and then the names of the Commoners, in the alphabetical order of the initial letters of the names of their several wards. Those present then audibly declared for whom they voted. The list having been gone through twenty minutes before the expiration of the time allowed for the election, a few then polled, but the fact having oozed out, in consequence of the private checks of members, that there was not more than two or three difference in the numbers for each candidate, the excitement became intense, and the activity of members, looking up their absent friends, of the most vigorous character. The final

¹ The terms of the Motion are set out, *infra* p. 110.

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moment having arrived, the Common Crier and Serjeant-at-Arms, Mr. Bedhouse, announced the poll to be closed. Messrs. Obbard (Deputy) and Saunders (J. E.), the Scrutineers, then carefully cast the numbers, which at five o'clock the Lord Mayor announced to be—

For Mr. Kerr	...	...	...	...	102
„ Mr. Corrie	...	...	...	...	100
					—
Majority for Mr. Kerr	...	...	...	...	2

The result was received with cheers.

Mr. Kerr then returned thanks, and so did Mr. Corrie, the defeated candidate, whose remarks were loudly applauded by the numerous assembly.

The *Morning Star* of the same date (May 6, 1859) disposed of the matter very shortly, in the following words :—

COURT OF COMMON COUNCIL.

The election of Judge of the Sheriff's Court then took place. There were a great many candidates, but most of them received very little support.

Mr. Kerr was ultimately elected by a majority of two over Mr. Corrie.

The *Standard* of May 7, 1859, commented favourably on Mr. Kerr's election, in the terms following :—

THE NEW JUDGE OF THE CITY SHERIFF'S COURT.

The Common Council, in their choice on Thursday of a gentleman to succeed the late Mr. Michael Prendergast, Q.C., as Judge of the City Sheriff's Court, have gone far to justify, in the eyes of the public and the legal profession, the propriety of entrusting them with so very an important power. From a list of candidates of high respectability, they have chosen the particular individual who could fairly display his fitness for the office by actual qualification. Robert Malcolm Kerr, Esq., LL.D., is an advocate of the Scottish Bar, and a Barrister of considerable experience, but whose writings perhaps have

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given him most position. Those works deal both with the practice and the principles of the law. His *Action at Law* has gone through several editions, and his edition of Blackstone has had a very signal mark of approval in being selected by the Inns of Court as the text books from which to examine law students on probation for their call to the Bar. At first sight the Common Council would seem to constitute rather a strange tribunal for deciding the qualities necessary in a man who was to hold a very important judicial office, but they have certainly acquitted themselves with credit in the election of Mr. Judge Kerr.

The press of the time were pretty unanimous in their view that the action of the Corporation, which had the effect of disqualifying Serjeant Sligh, in consequence of his having been previously a bankrupt, was to be highly commended. The terms in which they referred to the incident are, in themselves, a sufficient refutation of the venomous slander before referred to, by which Kerr's enemies and traducers hint that his election to the office he obtained was by means of recourse to what was a shabby and disreputable trick—namely, by suddenly, and at the last moment, in short, on the very eve of the election, digging out of the dust which had accumulated upon it by long disuse an obsolete rule of the Corporation. Such was not the view taken at the time; nor was there a hint (as there certainly would have been from among the many disappointed candidates had there been any foundation for such a suggestion) that the act was an electioneering trick.

The *Globe* may be well taken as representing the metropolitan press on this matter. It devoted an article to the subject on May 7, 1859, as follows :—

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The popular election of a judicial officer, even by the Corporation of London, is of consequence chiefly to the learned candidates, whose long years of study have left them still eager to obtain an appointment worth some £1,200 a year. There were ten candidates for this Judgeship of the Small Debts Court. But an event happened which renders the election of Thursday last eminently noteworthy, and most honourable to the Corporation. On the Motion of Mr. Abraham, the Court unanimously resolved: "That no person be eligible to be a candidate for the office of Judge of the Sheriff's Court who has ever been convicted of fraud, or who has compounded with his creditors, or been a bankrupt, or has taken the benefit of any of the Acts for the relief of insolvent debtors, and has not paid 20s. in the £; this Court being of opinion that the terms of the thirty-ninth Standing Order, disqualifying members of the Court from serving on Committees or Commissions chosen by this Court, or from becoming Governors of either of the Royal Hospitals by virtue of an appointment of this Court, should be applied and acted upon in the cases of candidates for judicial appointments under the Corporation."

It does not seem much to say to aspiring clever young men, "Owe no man anything," "Live not beyond your income," "Mind for whom and for what you become surety," but, unless these grave saws are made palpable, by the facts of real life, to demand obedience, and by stern sanctions, they will be unheeded. Men must know, and live under, the hourly terror of suffering, that ill-managed money affairs indicate a feeble mind, and render them unsafe as public servants, and, whatever may be the extenuating facts, such facts can be of no public avail whatever, for the whole experience of the world shows that money trouble is the result, in general cases, of imprudence. Prudence is the result of organisation and of education combined, just as courage in the speciality of a soldier is the result of both those causes. If men be disqualified because they have not prudence, people will cultivate and respect the virtue, for they will live in fear that their best hopes will be blighted. If they do not so prudently live as to be innocent of destroying other men's treasure, those persons who have not prudence naturally, and who cannot learn it, will be very justly constrained to seek some humble and less responsible vocation.

The competitive examination now so generally required encourages more assiduity in school learning; it tends to raise the intellectual

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average of all who have natural talents ; it renders all more industrious. They try for more, and they attain more. The dunces take a humble and proper place, and the public service does not miscarry by men's incompetence. The Corporation of London has the great credit of having gone a step beyond this, and decided that a man's nature, and his education, must develope not only the requisite intelligence, but the requisite self-restraint and good conduct. Great pains were taken to learn who was the cleverest man, but also it was determined that his nature and his education should manifest the requisite moral force in order to restrain foolish, mischievous, or dishonest conduct otherwise. Said they, "The smartest one among you shall be no judge of ours." Such a public rule, if adopted by the whole State—as we hope it will—here is an admirable beginning—will produce the grandest results for good. Not only would the manners of those who hold public places be improved, but the lives of all those who hope to obtain such, and indeed the lives of all the people, would be improved. It is no exaggeration to affirm that the excellent example set by the Corporation, if followed out, will save hundreds of thousands of treasure, and thousands of ruined fortunes and blighted hopes. If it become a rule that insolvency is a disqualification for public service, the terrors of such an apparently stern, but in truth most kind and merciful discipline, will constrain and compel many a fine genius, and many a high-spirited, gallant young fellow, to keep his money and live prudently. It was DESTUIT TRACY who said, "Restraining laws strictly administered make the most influential part of the education of a people."

While the above article may be taken as representative of the feeling of the metropolis generally on the subject, the City feeling was, as usually, well represented by the contents of the *City Press*. The *City Press* of May 14, 1859, contained some remarks on the subject as follows :—

THE ELECTION TO THE JUDGESHIP.

The resolution proposed by Mr. Abraham, and carried with acclamation by the Court of Common Council before proceeding to the election of Judge of the Small Debts Court, was eminently

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honourable to that assembly. Talent, law, knowledge, professional skill, are not sufficient qualifications for public appointments. A man's character must be free from blemish, he must have a moral weight, or he is as "sounding brass and a tinkling symbol." No doubt there may be hard cases, and men may have been in money trouble—may have been bankrupt, have taken the benefit of the Insolvent Debtors Act—and yet be honest, prudent men. But the whole experience of mankind is against the conclusion as one which can be adopted safely. Men who have been insolvent are *ipso facto* disqualified from holding public appointments of a responsible judicial and educational kind, and, when properly considered, a judicial officer is one of the most important educational officers in all society. A public body, like the Corporation, would sadly have forgotten its metropolitan and national position, had it allowed any mere clever person to stand before the assembled councillors and magistrates, who was suffering under so heavy a moral disqualification as insolvency, and it would have been an injustice to other men of equal talent, to have allowed any such to take so honourable a position. The Corporation have set an example of enviable virtue to our Reformed Legislature, where and whereby, we fear, many persons are allowed to take public, judicial, and other offices, who would have been repudiated by the citizens of London. The Corporation has done more than this: it has read a lesson to all young men, coming into the world, that they must live honestly, prudently, soberly, or other intellectual gifts will not avail them in their ambition to attain distinction. We hope the Lord High Chancellor of England, the Judges of the land, and others of high patronage and influence, will not allow the noble example of the Corporation of London to be lost upon them. It should be understood that the Corporation have only applied to public officers the same good rule they apply to themselves, for they will not allow any member of their Court who is, or has been, insolvent, to sit upon their committees.

Just a week and a day after his election, viz., on Friday, May 13, 1859, the newly-elected Judge of the Sheriff's Court was duly sworn into office before a Special Court of Aldermen, which was held at the

Swearing in after Election

Guildhall for the express purpose of performing that ceremony. An account of the occurrence is, of course, to be found recorded in the *City Press* of the period. Thus, in its issue of Saturday, May 14, 1859, it contained a biographical notice of the new Judge, concluding with a wish that, "May he long enjoy the confidence of his fellow-citizens in the administration of justice," and succeeded by a report as follows :—

SWEARING-IN OF THE NEW JUDGE.

Yesterday a Special Court of Aldermen was holden at the Guildhall for the purpose of swearing-in Mr. Robert Malcolm Kerr as Judge of the Sheriff's Court. The Right Honourable the Lord Mayor presided. Of the Aldermen present we observed: Sir John Musgrave, Bart., Sir Peter Laurie, Knt., Sir Chapman Marshall, Knt., Alderman and Colonel Wilson, Alderman Lawrence, Sir R. W. Calden, Knt., Alderman Meelie, Alderman Humphery, Alderman and Sheriff Hale, Alderman Finnis, Alderman Allen, Alderman Carter, and Alderman Copeland.

There were also many members of the Common Council in attendance.

The proceedings in the former Courts of Aldermen and Common Council having been read by Mr. Catty and confirmed,

Robert Malcolm Kerr, Esq., Barrister-at-law, was then introduced to the Court, and subscribed to the oaths of abjuration and supremacy, and took the customary oath as Judge of the Sheriff's Court, and Under-Sheriff and Judge of the Giltspur Compter.

The Court then adjourned.

Later on the same day, the newly appointed Judge took his seat as a Commissioner of the Central Criminal Court. This fact is noted in the *Morning Post* of Saturday, May 14th, which reports that on the previous day—

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During the afternoon a jury was sworn in the Grand Jury Room, and presided over by the newly appointed Commissioner, Mr. Kerr, who disposed of several trifling cases.

Upon his taking his seat, Mr. Longford said it was his very grateful duty to congratulate the learned Commissioner on his appointment, which had given great satisfaction to the Bar, and hoped he would remain many years amongst them.

CHAPTER V.

"MR. COMMISSIONER KERR" CLEANSSES AN AUGEAN STABLE ; AND HIS CONDUCT, JURISDICTION, DUTIES, AND SALARY ARE DISCUSSED.

MR. COMMISSIONER KERR has now become entitled to be so styled, by reason of his having taken his seat at the Old Bailey on the afternoon of Friday, May 13, 1859. Henceforward he will in these pages usually be called by this name, by which he himself always desired to be known—that of "Commissioner Kerr." The name of "Commissioner" is derived from the fact that the Act constituting the Old Bailey—commonly known as the Old Bailey Act, 1852, requires that, along with the Lord Mayor,¹ who is the first Commissioner named, the King's Judges, the Recorder of London, and certain others, the Judges of the Sheriff's Court shall always be

¹ It was probably from his being required by an old statute to be always named, in the Commission for sittings at the Old Bailey, as the first of "My Lords the King's Commissioners" that the Mayor of London grew, by courtesy, to be on all occasions styled "My Lord." The right conferred by the Statute of Maces of Rich. II. to, as a King's Commissioner, have a mace borne before him, while those not possessing this right were by the same statute forbidden to usurp it, also, no doubt, had a considerable share in the Mayor of London gradually being given the honorary title of "My Lord."

Commissioner Kerr

included as Commissioners. There are many Judges, several Lord Mayors, and numerous County Court Judges ; but no Judge, save of the Sheriff's Court, is permanently designated as being legally a "Commissioner." By Royal Warrant, all County Court Judges are given the right to be addressed as "His Honour Judge" So-and-so. But while the late "Commissioner" Kerr continued in the Old Bailey Commission, he was emphatically "The" Commissioner, and would not tolerate any other designation. A good-tempered friend once suggested that he was entitled to go to Court as "His Honour Judge," and advised him that, as the City of London Court is for all purposes of procedure a County Court, he was entitled to go to Court, and to be presented in the name and style of a County Court Judge. But the Commissioner would have none of this thing. He regarded his title of "Commissioner" as more ancient and honourable than any mere courtesy title conferred by Royal Warrant, on the Judge of an only modern County Court ; just as his ancient Court was, he claimed, superior to any such modern "mushroom tribunal" as a mere "County Court." ¹

¹ His successors in the two Judgeships of the City of London Court have, since the Commissioner's retirement, obtained a Royal Warrant entitling them to all the privileges conferred by a previous Royal Warrant ; and directing that the Judges of the City of London Court, as the old Sheriff's Court is now styled, shall take rank and precedence amongst other County Court Judges according to the dates of their respective appointments. "New lamps for old," said the Commissioner ; "the teaching of the Arabian Nights story over again."

Takes his Seat

It was not till he had taken his seat at the Old Bailey on the previous Friday, May 13th, and thus entitled himself to be designated by the name which he had selected and ever afterwards kept as most appropriate to his position, that Mr. Commissioner Kerr proceeded on Monday, May 16, 1859, to in due form also take his seat as Judge of the Sheriff's Court.

The *Sun* of the same evening—for curiously enough The *Sun* has always been an evening luminary of the press—reported the proceeding shortly, and made some comments at the same time. What it said on the subject that night was this :—

SHERIFF'S COURT.

MR. KERR. THE NEW JUDGE. BUSINESS OF THE COURT.

The newly elected Judge took his seat this morning, and from his manner it appears that he is quick and endowed with great coolness. He was, to all appearances, quite at home in his judicial seat, and he combines great serenity of manner with a not too stiff dignity. Mr. Buchanan, Mr. Clarke, of Bedford Row, and Mr. Beard having consulted as to the business course to be pursued, Mr. Buchanan applied that applications should be taken first, adjournments second, and new trials third. It very frequently happens that a professional man, who had an application to make, was kept sitting about all day until the rising of the Court, whereas, if the business of the Court was slightly altered, matters would be greatly facilitated.

HIS HONOUR was extremely anxious to facilitate business. But, supposing that there were many applications, suitors summoned for a quarter to ten would be kept waiting. He would consider the matter.

MR. CLARKE, of Bedford Row, said he had been induced to apply to His Honour upon a subject of the greatest importance, and one that affected solely the suitors of this Court. A short time since he, Mr. Clarke, had to pay a heavy fee of £2 5s. merely to apply for his

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fee. Defendant had paid the debt upon the morning of the trial of the cause, and in every other Court in such a case applications for the Solicitor's fee were not subject to the payment of hearing fees.

HIS HONOUR found that it was not in the power of the Judge to make any alterations, but he would like to have the two applications in writing before him, when he should take time and thoroughly consider them.

The *Morning Star* of the next day, Tuesday, May 17, 1859, also shortly reports, under the heading of "Sheriff's Court," that "the newly elected Judge of this Court, Mr. R. M. Kerr, took his seat upon the Bench yesterday for the first time." It proceeds, however, to add reports of two cases which came before the Court. Of the two cases thus reported, one is to be noted as having drawn from the new Judge, on this occasion of his very first sitting, the characteristic remark so often repeated in various forms by him in after years, "Litigation is far too expensive as it is." The other case was an amusing one of "*Brown v. Tennant*," the report of which is a good sample of that amusing class of case, sometimes arising in County Courts, and of the universal knowledge with which the Judges of those tribunals are expected by some of the public to be found always endowed.

Brown v. Tennant—MY WIFE'S PORTRAIT—THE PUZZLED JUDGE.

This was an action to recover the sum of £2 5s., the balance of an amount agreed to be paid by defendant to plaintiff for painting a portrait of Mrs. Tennant. The sum agreed to be paid was £2 10s., but £1 5s. had been paid by instalments. Mr. Buchanan for defendant contended that the picture was not a bit like the lady. To support this a Mr. Baker was called, and said that plaintiff was told it must be like Mrs. Tennant, or it would not be paid for. The

Methods in Court

portrait was produced, and Mrs. Tennant, who occupied a seat in the jury box, took off a very smart white bonnet and put on the head-dress she wore at the time she sat for the portrait. Mr. Tennant declared that the portrait was not a bit like the original. His Honour: Oh, the husband's no judge of his wife's portrait (laughter). Of course he never thinks it equal to the original (laughter). Plaintiff said he had been in the profession fifty years, and had exhibited thirty-six years ago at the Royal Academy. His Honour did not like to be called upon to decide such a case, which was essentially one for a jury. If it had been taken before a Judge who understood all about painting it would have been different. Mr. Buchanan said he intended to sue plaintiff for the 25s. His Honour then suggested that this case should be adjourned to a future day and the two actions tried together before a jury. Adjourned accordingly.

To adjourn a puzzling case for determination later may be gathered from the above report to have been a characteristic of the Commissioner the day on which he took his seat in Court as a Judge. In such cases he preferred, if possible, to get the aid of a jury, though it is a mistake to suppose (as some have done) that he ever *insisted* on one being obtained, or refused to himself decide a case if called on.

The *City Press*, of the Saturday following the taking of his seat by the Judge (viz., of May 21, 1859), naturally gave a full account of how it was considered that the new Judge was acquitting himself:—

FIRST SITTING OF THE NEW JUDGE AT THE SHERIFF'S COURT.

Excepting only the office of the Recorder of the City of London, there is none perhaps of greater importance to the public of this great metropolis in general, and the citizens in particular, than the office of Judge of the Sheriff's Court. The recent demise of Mr. Prendergast occasioned a vacancy, and the Court of Common Council were called upon to elect his successor, which they did by

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appointing Mr. Robert Malcolm Kerr (though by only a majority of two) to that office.

On Monday morning, Mr. Kerr took his seat for the first time as Judge of the "Sheriff's Court," and so soon as the doors were opened the Court was crowded, many being anxious to see how His Honour might behave himself upon assuming the new and responsible office to which he had been elected. For some hours we closely watched Mr. Kerr in the performance of his duties on that day, and we are bound to say that they were fulfilled in the most satisfactory manner.

Mr. Kerr took his seat at ten minutes past ten o'clock, not as though it were the first time, but with the greatest composure, as though it were his old seat. Messrs. Buchanan and Clarke, two of the oldest practitioners in that Court, made an immediate though respectful attack upon His Honour, as to the mode in which he would conduct the business of the Court. One thought that applications should take the precedence of adjournments and new trials. Another gentleman on the opposite side of the Court, suggested the desirability of appropriating a special day for hearing adjourned cases. There is little doubt but that these questions were intended as feelers to see how far these forensic gentlemen might go with their new Judge without offending His Honour. His answers in each case were most courteous and dignified. He expressed his determination to study first, and before everything, the public convenience, and, secondly, the convenience of the profession. As to adjournments, he should as far as practicable dispose of each day's business, and not begin a system of adjournments, which was a most expensive and objectionable course. Mr. Kerr could not, however, at once pledge himself to any particular mode of conducting the business, but would act in such a way as to him should prove the best calculated to meet the wants and wishes of the public.

Mr. Kerr has evidently brought to his office a large share of legal knowledge of County Court practice which, added to his suavity of manner and the impartial way in which he listens to the statements of the plaintiff and defendant, render him eminently qualified to occupy the position to which he has been raised, and we trust that Mr. Kerr may long be spared to fulfil those duties in the same even-handed and impartial manner that he commenced them.

Deals with Existing Evils

The Court over which Commissioner Kerr had come to preside for the next forty-two years was, to quote the words of the *City Press* in an article which will be presently set out, found by him, on his arrival, to be "an Augean stable which it needed a legal Hercules to clean out."

Before many months had passed Commissioner Kerr had proved that it had now come about that "the Court is infallibly under the government of a Judge who is a sound lawyer, a man of business, and that the public had ratified the act of the Common Council, by which Mr. Kerr was installed in his seat, by a general approval."

Some Judges set about altering the procedure of their Court before they have had time to acquaint themselves with the nature of its business, and at once commence with making drastic changes which they think must be reforms, merely because they are alterations. Like a wise man, Commissioner Kerr deferred all changes, with very few exceptions, till he had occupied the Bench for a few months, and had obtained the leisure of a vacation during which to consider what he would do.

One thing, however, vexed his soul, being repugnant to that intense sense of strict justice by which he was always guided. The Court was the great resort of usurers, who habitually had recourse to it to enforce their extortionate demands. It was not till many a year afterwards (we are now dealing with 1859) that the legislature passed "The Moneylenders Act, 1900." But Commissioner Kerr was in 1859 already possessed by the spirit which, more than forty years

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later (in 1900), produced that Act. At the very first sitting of a Court of his own, he made it clear that he would not allow that Temple of Justice to be made the den of these thieves. To again quote the article which has been before referred to—"The first evidences of Mr. Kerr's individuality were certain decisions of cases arising out of loans granted by quasi-societies, at exorbitant rates of interest, in which, though granting orders for payment, he in many cases refused costs, and enlightened lenders and borrowers alike as to the scale of profits adopted by unprincipled moneylenders."

The *North British Daily Mail* of Tuesday, June 24, 1859, contained the following comments on the subject :—

LOAN SOCIETIES AND THEIR PER CENTAGE.

On Saturday, at the City Sheriff's Court, the new Judge, Mr. Kerr, was engaged nearly the whole sitting in adjudicating in actions on promissory notes held by loan societies. In each case the Judge created much sensation amongst the suitors by a calculation of the percentage which these loan societies charged, irrespective of their inquiry fees, fines, &c. In the first case, on balance of a promissory note payable in fourteen days, the Judge said the interest charged was 400 per cent. In another case, he calculated it to be 500 per cent. In a third he said that the interest charged was 3,650 per cent. In a fourth he remarked, to the astonishment of all in Court, that 7,300 per cent. was the very moderate rate of interest charged ! In some of the cases he dismissed the summonses, and in others, although making orders for payments, would allow no costs, remarking that it was high time for the legislature,¹ or some authority, to step in and put a stop to these shameful extortions from the poorer classes. In all such cases he should refuse to commit, as he considered the enormous interest as a kind of insurance against loss.

¹ As forty years afterwards (1900) it at last did.

Deals with Existing Evils

The method of giving professional moneylenders and loan societies judgment for their "pound of flesh," or strictly legal rights, but ordering such claims to be satisfied by only small instalments, thus commenced at his first sitting, was continued by the Commissioner up to the end of his long judicial career. In about the middle of this—namely, in 1882—a clerk borrowed of one of those just specified £5 for three weeks, giving a bill of exchange for the loan, and a cash payment of 15s. for "the accommodation." Said the Commissioner, repeating the sort of arithmetical calculation which had characterised his very first sitting: "I find it works out to 450 per cent. per annum." Instead of making a commitment order as he had been invited to do, he made an Order, that the judgment for the debt should be satisfied of 2s. per month, so that, as he sarcastically remarked, "the plaintiffs may get their money sometime towards the close of the century." There was, of course, a little caustic exaggeration in this observation, since an order to pay £5 or 100s. by instalments of 2s. per month, if made in 1882 would obviously only take four years and two months to "work out," and the payments would, in any case, at latest all have been made by some date in 1887.

In all cases such as these the idea which was present in the mind of the Commissioner was to express disgust and abhorrence at the acts of the plaintiffs, and to also bring it home to their minds that such light instalments as he directed could be ordered, without injustice to them, where they had already extorted payment of outrageous rates of interest.

While the Commissioner sometimes ordered pay-

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ment by instalments which would take many years to satisfy the debt, he used to often mention a case in which a poor servant having incurred a small debt, went on paying "interest and instalments" for no less than *eighteen* years. This and other interesting facts in connection with this subject and others, will be found mentioned in a very interesting interview with the Commissioner, forming the subject of an article in *Cassell's Magazine*, of January 4, 1893.

A well-conducted newspaper is always willing to admit to its columns arguments on both sides. It was natural that the Commissioner's views as to money-lenders and the interest which they charged, even if they were generally approved by the public, should be resented by the harpies themselves. Accordingly a letter appeared in the *City Press* of Saturday, July 2, 1859, containing arguments which are familiar to us, and saying as follows:—

LOAN SOCIETIES AND THE PUBLIC.

To the Editor of the "City Press."

SIR,—I have always noticed that the *City Press* was ever ready to assist in putting down tyranny or injustice of any kind. I therefore appeal to you for your assistance. I am a tradesman in the City of London, paying a rental of between £500 and £600 per annum, and having, by honest industry, saved a few hundred pounds, for the last five years I have been lending it in sums varying from £1 to £300. During that time I have lent to nearly 5,000 people, and out of that large number there has been only 400 sent to prison. I had occasion to summon four parties in the Sheriff's Court last Friday, and had a long conversation with His Honour about the interest charged. On one transaction it was at the rate of 170 per cent. I will tell you the case. A man that I had never seen wrote a letter to me asking if I would lend him £3, saying that he was in

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a constant situation in the City, and had been there for two years, and that he was married, and lived in the Hackney Road, and that he wanted a little money to buy a few clothes for his wife and children. I answered this letter saying that if what he stated was true I would lend the money. Accordingly I went to his shop and afterwards to his private residence. For that I charged him 1s. I then gave him three sovereigns, but made out the promissory note for £3 5s. That was on the 1st of March. Now that is four months since, and he has only paid 3s. 3d. His Honour would not allow costs, saying that I had charged enough on the bill to pay costs. There is, I am aware, a general feeling against a man that lends money, but I would ask any retail tradesman in the City if he could do business with the same risks for less profit, and I cannot see the reason why I should not be allowed costs out of pocket. Another case was a tradesman in business and a householder who ran into my office two years since and said, "Will you lend me £2 for a fortnight? What is your charge?" "Two shillings." I gave him £2, and he paid a few weeks' interest, and 26s. off the debt, and would pay no more. I summoned him, and he did not pay one penny. I then took a judgment summons against him. His Honour would not hear the case, but said, "No order." My idea is that a man ought to pay if he can, and if he won't he ought to be made. I am prepared to prove that the moneylenders of London do not get so much profit out of £100 as the hatter, the tailor, the publican, or, in fact, most other retail shopkeepers. My idea is this: If a tradesman wants money and says, "I want £50 for two months and I will give you £15 for it," it is a bargain betwixt him and me. If at the end of the time he does not pay I believe he ought to be made do the best according to his circumstances. There is a difference between honest poverty and an arrant knave. I may mention this fact: that the whole of the loan societies in London do business on nearly the same terms and receive the same sort of assistance from the Sheriff's Court.

Mr. Commissioner Kerr had not long sat upon the Judicial Bench when there occurred a small incident which must have sufficiently shown the public that, while they had obtained a very excellent lawyer as the new Judge of the Sheriff's Court, they had at

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the same time obtained a Judge who was a good deal more than a mere lawyer. The new Judge soon showed himself to be a man of cultivation. To know much more than the laws of England and of his native country, to possess a useful and practical acquaintance with the methods of business, a familiar colloquial knowledge of modern Continental languages, and an ability to converse with ease in them, is not universal amongst our Judges. Some few of them, indeed, possess these gifts. Mr. Justice Darling, for instance, to recall a recent example, caused a little sensation by, not long ago, passing sentence upon a French prisoner in the offender's native tongue. The Commissioner, as long ago as 1859, tried a French commercial case in the tongue natural to the parties, without the aid of an interpreter. This showed an intimate knowledge of the French tongue, and an acquaintance with colloquial French at least equal to that of which Mr. Justice Darling's subsequent effort gave proof. Every one cannot colloquially discuss a matter in commercial French. Here is the report of what Commissioner Kerr did in 1859 :—

MOLLETT *v.* ROPER.

This was an action for commission on wine sold, and the plaintiff was nonsuited. Nothing particular transpired in the case, except that it was conducted throughout in the French language. Both parties being foreigners, and being unable to speak English, the Judge examined the witnesses in French, and summed up the evidence in that language, but gave his judgment in English. This is rather an uncommon proceeding in an English Court of Justice, and saved the expense of interpreter on both sides.

Gets Rid of "Agents"

Having at once, and as soon as he became Judge, dealt with the abuse of the Court by moneylenders, and prevented their employing its machinery for the collection of usurious interest, the Commissioner seems to have thought it wiser to wait for some weeks before he attacked the next grave abuse. At that time it appears, by the Articles quoted below, that hangers-on who called themselves "agents" infested the vicinities of the County Courts, Police Courts, and other Courts of Justice. The writer can indeed well recollect them himself. Commissioner Kerr determined to get rid of them out of his Court at least.

The Sheriff's Court was, to use the words of a paragraph in the *City Press* which is quoted more fully lower down, "so infested with them that it was as unpleasant as walking through a congregation of sewer rats to have to go there." Mr. Commissioner Kerr determined to rid his Court of these pests about three months after he had taken his seat as Judge. We learn the following from the *City Press* of Saturday, August 27, 1859 :—

SHERIFF'S COURT.

On Wednesday last Mr. Kerr informed the professional gentlemen attending the Court that on and after October 1st a great many alterations would be made in the conduct of the business of the Court. Among other things, he should insist upon counsel and solicitors to appear in robes, or he will not allow fees. This may seem a mere adhesion to a useless formality, but we believe it will prove a means of protection to the public, for, doubtless, His Honour's intention is to make a visible distinction between qualified practitioners and the hungry sharks that hang about the Courts to entrap the unwary into accepting their illegal services

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That the efforts of the Commissioner to rid his Court of these "agents" were to a large extent successful, incidentally appears from a paragraph in the *City Press* about a year later—viz., on Saturday, September 1, 1860. Under the heading of "Touters at Police Courts" it in 1859 remarked :—

In the investigation of a frivolous charge, made before Mr. Alderman Finnis the other day, a person named Empson attempted to play the part of advocate, but was stopped by Mr. Wontner, who said there was a system of "touting carried on in nearly every police court that was scandalous." We have on several occasions cautioned the public against the blandishments of these pretenders.

The above extract sufficiently shows that Touts were there recognised to be a nuisance. Some ten days later, on September 18, 1859, the *City Press*, in the course of an article on the subject of the Sheriff's Court, and the improvements in it which Commissioner Kerr had already wrought during the short period of time which elapsed between that date (September) and his election at the beginning of the previous May, said, as to these touters :—

The Small Debts Court was so infested with them some short time since that it was as unpleasant as walking through a congregation of sewer-rats to have to go there. Mr. Commissioner Kerr has done all in his power to rid suitors of the annoyance, vexation, and fraud practised by these plausible prowlers, and we can hardly help thinking that prompt and vigorous action quite within the boundaries of the law on the part of the authorities at the Police Courts would make something of a clearance. Mr. Finnis made a step in that direction in expressing his intention to disallow costs in all cases where uncertificated persons presented themselves as advocates. But this is not enough. The public need to be protected against their lies, their promises, and their acceptance of fees out-

Requires Wearing of Robes

side, and such acts are violations of the law. It seems strange that prosecutions are not instituted on the basis of evidence which might easily be collected.

The real object of the Commissioner in requiring that robes should be worn in his Court by solicitors was alike to protect the public against "agents," and to add to the dignified and orderly conduct of business in his Court. The solicitors as a profession loyally supported him. But of course some grumblers expressed dissatisfaction at the change. One of these addressed to the *Standard* a letter, which appeared in its columns on Monday (August 29th), in the terms following :—

SIR,—The judicial seat of the Sheriff's Court has since the vacancy thereof by Mr. Russell Gurney been oddly filled, and the satirical eulogy of an old song will well apply—

"The place of all places
For hearing the cases
Decided with grace is
A summonsing Court."

It is on the present head official that I have to remark.

Yours and contemporary pages frequently disclose some of his strange decisions, and love of innovation. This morning you published another of his fanciful alterations. He will have all the attorneys who appear before him wear robes, or he will not allow costs for the attorney's attendance. Now this is a great hardship to the profession, and to suitors who may employ attorneys who, through inexperience of, and small practice in the Sheriff's Court, have not provided robes. Why cannot a legal gentleman appear in his plain dress? Why should attorneys' managing clerks be excluded from appearing for their principals, as they lately were? Why should there be so much caprice in allowing the costs of attorneys? Is it because the young Judge will make himself famous by unpopularity, or is it because he has a few briefless friends at the Bar, who will,

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on each sitting day, plant themselves in Court to receive briefs or instructions from harassed attorneys and from pseudo-lawyers? I, having the truth from reliable quarters, assert as a fact that it is for the benefit of these coming men—these barristers without business—that the new and absurd rules of the Judge are made, and I call upon the profession to resist boldly the difficulties which are presented to them.

Punch, too, appears from the *City Press* article, set out below, to have indulged in some very feeble fun over the matter¹ which most people, if they care to turn to it, will probably agree with the *City Press* in considering “neither witty nor sensible, and scarcely playful.”

Both the legal profession and the lay Press,² however, supported the Commissioner.

In the *Law Times* of September 17, 1859, it is reported that on the Friday week previous (9th) the following discussion had taken place at the Sheriff's Court before the Commissioner's Deputy, Mr. Needham.

Mr. Buchanan asked leave to address a few words to His Honour in reference to a subject of great importance. He intended to have spoken on a former occasion, but thought it better to reserve his remarks till a late day in the Session. He was obliged to address His Honour, as Mr. Kerr was absent to-day.

Mr. Needham would be glad to hear anything Mr. Buchanan had to say.

Mr. BUCHANAN.—The subject upon which I have to comment and suggest is that of the robing of Solicitors and Attorneys attending this Court. Your Honour will agree with me that the adoption of the suggestions of Mr. Kerr would be fraught with much good. People would be able to tell who was a Solicitor or Attorney if he wore those robes peculiar to his position. Your

¹ See *post*, p. 141.

² See *post*, p. 138.

Requires Wearing of Robes

Honour is aware that, in the existing state of affairs, there is some danger of other parties passing as Attorneys besides those actually entitled and, in addition, there are numerous advantages of which Your Honour is well aware. I have consulted with some gentlemen in the profession who attend here, and they quite agree with me that the respectability and dignity of the Court would be much enhanced by some attention to reasonable ceremonies. It is very true that at the present time there is no robing room, but by the assistance of our good friend and chief clerk, Mr. Osgood, we shall get over the difficulty. I may also say that it would be very much better if the usher of the Court were to robe. It would materially facilitate his passage through the crowd and his presence would be better acknowledged. As we are anxious that this matter should be finally arranged before the October Sessions, I am compelled to address my observations to your Honour as I may not have another opportunity before such time, and I feel convinced that your Honour will mention my remarks to the proper quarter.

Mr. NEEDHAM.—I quite agree with what has fallen from Mr. Buchanan and will take care that his suggestions shall be fully made known to the Judge for whom I sit. There cannot be the slightest doubt that the robes distinctive of the class should be worn, and a harmless ceremony would be productive of great good. You may rest assured that I shall not forget this most important subject, and shall consider it is one that should be most prominently brought under the notice of Mr. Kerr.

Mr. Buchanan then thanked His Honour and withdrew.

As has been already explained, the Commissioner's order that solicitors appearing in his Court should do so in robes was really part of his plan of campaign against "agents." Many an "agent" will pose as a solicitor and thus get a hearing, without its being discovered that he is not a solicitor, where professional robes are not insisted upon. But a man who ventured to assume the professional dress without being a member of the legal profession at all would, to begin with, be a

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bold one ; he, moreover, would very soon be detected as an impostor and exposed by the solicitors in the Court.

To allow persons to appear on the ground that they are "clerks" to solicitors is again practically another way of allowing "agents" to have audience, and those, too, men of the worst class. "Agents" of the lowest type, and not a few professional men who have had their names removed from the Roll of Solicitors, usually have a "cover" or "umbrella," under the shelter of which they practice, afforded by the name of a low-class solicitor who has still managed to keep upon the Rolls. Within the last few years, thanks to the increased vigilance of the Incorporated Law Society, individuals of the class just described have become few. But within the comparatively recent memory of the present writer they have been numerous. In 1859 they must have flourished exceedingly and been many. Accordingly Commissioner Kerr's refusal to hear people other than members of the Bar or solicitors, on the ground that they were "solicitors' clerks," was wise. On October 14, 1859, the following paragraph appeared in the *Daily Telegraph* :—

REFUSAL TO HEAR ATTORNEYS' CLERKS IN THE SHERIFF'S COURT.

In the Sheriff's Court yesterday, Mr. Kerr presiding, the case of the *South Western Railway Company v. Dillmott* came on for hearing. This was an action to recover the carriage of several bags of artificial manure and demurrage of certain bags of the same left on the plaintiff's premises. When the case was called on an attorney's clerk said he expected his counsel every moment. Mr. Charnock said defendant could not consent to wait. He was quite ready to go on. The attorney's clerk said he would go on with His

Refuses to hear "Clerks"

Honour's permission. His Honour said he had laid down a rule not to hear an attorney's clerk, and he could not now break through it. He would adjourn the case. Mr. Charnock applied for costs. The case was then adjourned upon payment of costs. Subsequently the counsel arrived, but too late, the parties having retired.

The Commissioner, while thus doing everything in his power to clear his Court of "touts" and "agents," on the other hand did all he could to encourage the appearance in it of regularly qualified solicitors. This explains his apparent laxity of practice on a subject which has lately attracted some attention, in consequence of one at least of his successors having drawn attention to the strict letter of the law governing the matter, and announced an intention on his part of in future rigorously enforcing its observance. We know that the Commissioner was at least as good a lawyer as either of his successors, and so may feel sure that he had a motive for acting as he did. The reason why he did not very strictly enforce the law as to agents and solicitors in the particular which will be presently mentioned was that he was desirous of obtaining business for his Court, and, while anxious to get rid of "agents" and "touts" of all descriptions, sought to attract to it a good body of solicitor-advocates. The presence of this always tends to add to the business of a Court, and consequently, in this case, to the amount of the fees received by the Corporation. No doubt the Commissioner was not quite unselfish, and not being paid by any salary which had been declared to be a *maximum*, knew that it was his interest to attract business to his Court, and to add, as it were, to his labours in order to found on increased

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labours a claim for increased remuneration. The law with which he omitted to enforce a strict compliance in all cases arose as follows :—

When audience in “the new County Courts” was given to solicitors, the Bar, in alarm, sent a deputation to the then Lord Chancellor to repeat in another form the cry raised centuries ago by the shrine-makers of Ephesus against the Christian religion, and with, broadly speaking, about the same amount of success. His lordship regretted that he could not help the Bar further, but undertook to do what he could for it by introducing into the clause in the Act which gave solicitors a right of audience in County Courts words taking away this right of audience from any “solicitor retained as an advocate” by “the solicitor acting generally in the action or matter.” The words thus added, while effectually preserving the right of the Bar to alone receive instructions from solicitors who are for any reason not able to themselves personally appear to conduct the cases of their clients, unfortunately themselves created a new difficulty. Many of the cases tried in County Courts are actions brought for very small amounts indeed, as low, in fact, as a few shillings. In such cases the amounts in dispute would not afford the smallest fee (one guinea, with a clerk’s fee of 2s. 6d. added) which a member of the Junior Bar is allowed to take. Nor can it be reasonably expected that a solicitor with considerable commercial or other practice shall sacrifice it and his time by coming to himself conduct a solitary case in which a client of his claimed a few shillings—especially when he might perhaps be detained all day for this one

Encourages "Solicitor-Advocates"

case to come on. What is to be done in such cases? Practically, the only way out of this difficulty, without bringing back the "agents," is (as the Commissioner always did) by reading the words which forbid the appearance of "one solicitor instructed by another solicitor" as if they had either prefixed or added to them words restricting their operation to "in any case in which counsel might properly be instructed." On the other hand, the enactment is one which can, with the greatest ease, be altogether evaded by any one who knows the proper method of doing so in a way sanctioned by a practice similar to that employed by the great "agency firms" when Common Law business still flourished in the Superior Courts. Under all the circumstances, and for the reasons above disclosed, the Commissioner did not, in these small cases, too strictly or indiscriminately enforce the statutory provision that one solicitor should not appear "as advocate" on the instructions of another solicitor. The result was that a group of solicitor-advocates of an excellent type came into existence in the City Court—ready, for a very small fee where the nature of the case required that such should be accepted, to act as advocates on the instructions of any one, whether another solicitor or not. They were able to accept a fee only small in each case, and willing, by reason of the number of small cases they got during each day, to devote themselves to the Court during the whole of each sitting on any case requiring this. These, being professional men, were restrained by a professional propriety and decorum, to which mere "agents" or "clerks to a solicitor" were strangers. Suitors got

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the benefit of their services ; the Court and the Commissioner benefited by the additional business brought to the latter in consequence of their existence, and the Corporation obtained profit by the additional Court fees earned in consequence.

During the first Long Vacation that followed after his appointment, the Commissioner prepared a new code of rules to regulate the procedure of his Court.

The procedure of the Sheriff's Court of London was at that time,¹ regulated by a special Act of Parliament—the London (City) Small Debts Act, 1851. To bring the rules so made into operation it was required by law that they should receive the sanction of the Recorder of London and of certain City officials, and also that of one of the Chiefs of the three then existing Superior Courts. The rules the Commissioner had prepared of course received the sanction of the necessary City authorities, and that of a "Chief" was obtained from Chief Justice Sir William Erle—then Lord Chief Justice of the Court of Common Pleas.

There are still, it may be here remarked, many local courts scattered up and down the kingdom, each of which once, like the Lord Mayor's and the Sheriff's Courts in London, exercised considerable local jurisdiction, but they have all gradually fallen into disuse, as the London Courts would certainly have done had it not been for the prudence and wisdom of those interested in maintaining them, in from time to time obtaining for them new rules of practice. Local Courts elsewhere have fallen

¹ It is now provided by Statute that the practice in the City of London Court shall be the same as in County Courts.

Seeks New Rules of Procedure

into disuse and become practically obsolete because it is now practically impossible to get new rules of practice made for them, while those under which they are compelled to transact such business as they still obtain have, by lapse of time, grown to be out of date. New rules for such Courts cannot be made without certain approval. An individual Judge or Judges were formerly able to give such an approval; indeed, it formerly used to be usually given by the Judge or Judges who travelled the Circuit, and presided at the assizes for the county in which the town possessing the Court happened to be situated. Little by little, and by steps which it would not be of interest to the general reader, and probably not even to the professional legal reader, to trace here in detail, the power of confirming new rules for "Borough Courts of Record," as they are called, has been taken away from the Judges individually. This power of sanctioning new rules for a local court is now vested in a committee, of which the Lord Chancellor for the time being is the chairman. This committee, so far as such rules are concerned, exists, in truth, not to make new rules for local Courts, but to *prevent* the making of any new rules for them. It is the policy of "The Treasury" to drive all the business of the country into the County Courts, since the fees from them are paid to it, while the fees paid by suitors in Borough Courts belong elsewhere—mostly to the local Corporations—after the necessary expenses of the Court have been paid. Such being the policy of "the Treasury" it doubtless is better that this policy should be carried out by a committee, with an avowed political partisan at its

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head, rather than by individual Judges. Accordingly, some years ago, while the power of confirming rules for local Courts was still nominally possessed by the individual Judges, it is well known that "the word was passed" that the Judges were expected not to exercise their judicial function of considering and allowing new rules, it being the desire of "the Treasury" to get rid of local Courts by obliging their business to be done under rules which should practically make it impossible for these local Courts to get any business at all, and to then either buy such Courts up at a nominal price or to allow them to silently become obsolete. Whether such a policy is entirely constitutional may perhaps be doubted, since it is depriving local Corporations and others of what might be a very valuable "franchise" or right. But the growing dependence in many ways of the Judges of the land upon the Government of the day for promotion, and on "the Treasury" in monetary respects, is still more open to question upon constitutional grounds. However, the City of London Court could, in 1859, obtain separate rules for its own governance, and the Commissioner accordingly did this, as already mentioned.

Popular opinion recognised the zeal and activity of the Commissioner, coming to the assistance of his great learning and practical knowledge. The newspaper press loudly praised his efforts, as will be sufficiently clear from the following article extracted from the *City Press* of September 10, 1859 :—

Our readers are sufficiently familiar with the changes that have passed over the City Sheriff's Court, during the past four months,

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to render anything in the shape of a narrative altogether unnecessary. They may remember, too, that we had occasion, more than once, to animadvert on the manner in which the business of the Court was conducted during the presidency of the predecessor of the present Judge. "De mortuis nil nisi bonum" is a good and kindly motto that, like a guardian of the grave, rises up before us at this moment, ready to approach us if we utter one untimely word. Therefore, letting bygones be bygones, we pass from persons to things, and simply remark that the City Sheriff's Court was once an Augean stable, and needed a legal Hercules to clean it out. Since Mr. Kerr's appointment in May last, the place has undergone a wondrous change. Small cases are despatched with promptitude, and suitors no longer bewail the terrible consumption of valuable time, consequent on the settlement of petty pecuniary differences. Important cases have careful attention; discursive small talk is no longer allowed; nor is the Court crowded by persons attracted to hear rough jokes, and eccentric questions by the Bench. The Court is infallibly under the government of a Judge, who is a sound lawyer, and a man of business; and the public have ratified the act of Common Council, by which Mr. Kerr was installed in his seat, by a general approval of the manner in which justice is dispensed there. But alas! one can't please everybody in this world. Your right will be called wrong: your kindness cruelty: and your very forbearance made evidence of a testy temper. Accordingly, Mr. Kerr awakened a little opposition as soon as it became manifest that he did not feel himself bound, neck and heels, to the *régime* of confusion that had long held sway at Guildhall Chambers, though that had been considerably modified by the discreet sternness of Mr. Chambers in his capacity of Judge *pro tem*. The first evidences of Mr. Kerr's individuality were certain decisions, on cases arising out of loans granted by quasi-societies at exorbitant rates of interest in which, though granting Orders for payment he in many cases refused costs, and enlightened lenders and borrowers alike as to the scale of profits adopted by unprincipled moneylenders. When the culprit at the drum-head cried, "Strike higher!" Pat's answer was, "Flog as I will, I can't please you anyhow." Surely Mr. Kerr did not expect to purify that dark nest without a little disturbance and ruffling of hostile feathers, and we altogether mistake the man if he now budges one line from his programme because the press and the profession have

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made a partial alliance to bully him. It should be remembered that the City Sheriff's Court is in no way governed by the County Courts Act. It has a constitution of its own, created by the Act passed in the fifteenth year of her present Majesty, popularly known as the "City of London Small Debts Act." This Act empowers the Recorder, the Common Sergeant, and the Judge of the Court to make and issue such rules for regulating the practice of the Court as may appear to them desirable and, as a further security for the interests of public justice, such rules must be approved of by the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or one of them. On the basis of this legal provision the Judge of the Sheriff's Court, having become familiar, during four months' practice, with the defects of the regulations which have been in force unaltered for many years past, issued a new code, duly certified by Chief Justice Erle, which came into operation on the first of this month. These rules and orders are so framed as to conserve the interests of the numerous and respectable body of attorneys practising at the Court, and they are such as give the suitors 'no ground for complaint. They are divided into three parts, and may be briefly stated as follows :—

1. Rules of practice to be used in the Court.
2. General rules and orders as to costs to be allowed to the Barristers and Attorneys practising in the Court.
3. Some very salutary regulations as to proceedings under the Friendly Societies Acts.

Of these rules the most noticeable are as follows :—

Where a person under twenty-one years of age (and who is in law styled an infant) brings an action, except for wages, or piece work, or for work as a servant, he must procure some one who will act as his best friend, and undertake to be responsible for the costs of the action, in case the plaintiff fails, and does not himself pay the costs which may be awarded.

The Judge is to direct what number of witnesses are to be allowed in the costs of the successful party, and he may allow the costs of witnesses although they have not been summoned. In actions in which the plaintiff's claim does not exceed £5, neither party are to be allowed the costs of either Counsel or Attorney, unless both parties have previously agreed to be represented by Counsel or Attorney, and in which the fees are fixed. In the case of actions

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referred to arbitration the costs of Counsel and Attorney attending the arbitrator are not to be allowed without the order of the Judge.

In all cases, the costs are to be taxed by the proper officer of the Court, according to the amount recovered, if the plaintiff succeeds, or according to the amount claimed if defendant succeeds.

These regulations have as yet given rise to but little discussion. They are so plain, practical, and necessary that neither enemies nor friends have much to say about them. They will, in fact, quietly settle the forms of procedure, and enable plaintiffs, defendants, and practitioners to get through their causes with less hubbub and loss of time, and with more equanimity and good temper, than have been known in this Court for many years. They will go far to carry out the very just and liberal views which Mr. Kerr entertains, and the citizens of London may be properly congratulated upon having a Judge who is anxious to make his Court what the legislature intended by its establishment it should be—a boon to the public. But the indignation of the profession and the crowd of grumblers is reserved for Mr. Kerr's decisive rule, in requiring Counsel and Attorneys to appear robed. The press, ever on the alert to protect the interest of the public, has signally failed on its criticisms on the reforms taking place in the Sheriff's Court. When Mr. Kerr first broached the subject of costume in reply to Mr. Beard's application for costs, he said, "I shall require not only Counsel, but also solicitors to robe, or I shall not allow fees." To this Mr. Beard replied "that he did not think his case of sufficient importance to appear in costume." On this colloquy *Punch* proposes that, if robing is to be determined by the amount of fees received, then higher amounts ought to demand more robing, so that the pleader would be robed with a profusion proportionate to the importance of his case and "the general rule should be that of absurdity in proportion to the gravity of the question." As this is neither witty nor sensible, and scarcely playful, we may let it pass. Not so a very grave charge made by an anonymous writer in the *Standard*.

The letter already quoted on p. 129 was here set out. The article then proceeded as follows :—

It is due to the public and the profession that this invisibility, who signs himself W., should appear in a recognisable form, with some definite information from reliable quarters. The character of

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a Judge is not to be dealt with in this method of dark insinuation. It does not consist with the dignity of the Bench for a Judge to enter into a paper war with one of the latter letters to the alphabet, and, so far as the object of his charge is concerned, "W." may continue to enjoy obscurity. But there are other interests involved besides those of a personal kind; and it may be valuable information to those who are busy in criticising the new regulations of the Sheriff's Court if we tell them it has long been the favourite haunt of black-legs, and the principal object Mr. Kerr has in view is to deprive those prowlers of every possible chance of bleeding unprotected females, and taking knowing people by surprise. Naturalists say that every animal has its own peculiar parasite, that feeds upon its vital humours. Law, Police, and County Courts are equally unfortunate. Their purlieus are the resorts of landsharks and harpies, who make it their business to entrap the unwary into receiving their ridiculously useless attentions, and it often demands some amount of courage on the part of folks not used to the forms of procedure to resist the blandishing invitations of these gentry to make it "all right" for a small consideration. When Mr. Alfred Smee penned his account of the "*Aphis Vestator*," he ought to have illustrated it with full-length figures of the oldest sinners that dodge about Guildhall Yard on the look out for cases. They accost every likely looking person who may be on the way to those foreboding steps, impudently take complaints from the hands of youthful suitors, demand money to pay fees, offer numerous superfluous advices about forms and regulations, and in the guise of agents, friends, relatives, attorneys, clerks, or otherwise, actually attempt to conduct cases, and, of course, end by filching their deluded clients of fees for which they give no equivalent whatever in the shape of service. It would be impossible to convey to those who are not familiar with the devices of these harpies, anything like an idea of the extent of their operations, or of the varied ways in which their nefarious traffic is conducted. If you were on your way to take out a summons, what would you think of a musty personage stopping you at the threshold and laying his hand on your arm, ask boldly, "What is the amount of your claim?" You might give him a kick as a proper reply, but there are plenty of communicative, soft-headed people in the world, who would not be proof against it, and whose legal communion with the musty personage might end in their parting with half a sovereign, getting their case muddled, and losing double as

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much time as would be necessary if a clean sweep could be made of all the streets and lobbys. These examples of the human *Aphis* know just enough of the law to preserve themselves from its visitation. They defy it to lay hands on them, even their identity is no easy matter, for they can ape the chameleon, and we may safely say that a wholesale system of plundering is carried on in the vicinity of the Sheriff's Court, against which the Judge has no power of suppression. The purport of Mr. Kerr's regulation as to costume is to aim a death-blow at the system within the Court. He has a right to require Counsel and Attorneys to appear robed, and that right he will enforce, not for whim or to bestow any sham gravity on the scene of which he himself is the honourable centre, but out of regard for public interests, to protect the unwary, to ensure the respectability of advocates, and possibly add to that decorum which has gradually grown in his presence out of the chaos which reigned there before he took his seat.

Until it shall be proved that he has private ends to serve in thus remodelling the usages of the Court, the public are bound to accord him the moral support and confidence due to every Judge who dispenses the law righteously. He has shown himself to be the enemy of oppression, extortion, and pettifogging jobbery; now he wages war against quasi professional scoundrelism and, if solicitors who are not ashamed of their own name are not prepared to concur in regulations which give them distinction as qualified practitioners, the public must ratify by its approval reforms that have long been required, and utterly discountenance the foolish objections that are being urged against them. It is always a comfort to see peace inaugurated on the site of a bear-garden; and we congratulate Mr. Kerr's having established order in so unpromising a place as the City Sheriff's Court.

About the same time the Commissioner had also prepared a Bill for the amendment of the jurisdiction and procedure of his Court. This Bill, however, appears to have met with so much opposition, and to have caused such differences of opinion, that it had to be withdrawn. This may be gathered from an article which, during the following spring (1860), appeared in

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the *City Press*. That paper, on March 24, 1860 said :—

It will be remembered that, a short time since, we called attention to the administration of the Sheriff's Court, and to Mr. Kerr's Bill for its amendment. We regret to hear that the Bill is likely to be withdrawn, owing to the strong opposition offered in influential quarters. Several deputations have waited upon Lord Redesdale upon the subject, and practically the proposed reform is at a deadlock. The City must remain, therefore, in a state of unenviable isolation, in regard to the administration of the law as to the recovery of small debts. This state of things cannot last long; we cannot remain behind the age in a matter so seriously affecting the activities of every-day commerce, and even of ordinary social life. Did Mr. Kerr deal too boldly with the deficiencies of the Court, or is there any special interest at work to stay the hand of innovation? Surely it is not for the public good that so weighty a matter should be thrust aside, so necessary a reform be obstructed.

Commissioner Kerr had, in the above and other ways,¹ speedily proved himself to be a very "strong" Judge. Suitors at once began to resort to his Court in considerably increased numbers. Truth to say, the public love a "strong Judge," and when they see one speedily discover his qualities. The majority of Judges are, like ordinary mortals, content to be merely respectably conventional. Such men never do anything out of the common, even under exceptional circumstances. Placed in a Court, such as the Sheriff's Court of London was when the Commissioner took charge of it, a man of this ordinary type would have possessed neither the strength to clean out this "legal Augean stable" nor the courage to do it.

¹ As to the "other ways" in which the Commissioner had proved himself a strong Judge, see the next chapter.

Obstacles to be Overcome

But the Commissioner succeeded not only in getting rid of foul abuses and attracting business to his Court, but in doing this, notwithstanding that there were two great obstacles not previously mentioned, both which he had to overcome. One of these was the physical and structural defects of the actual building in which he had to administer justice. The other of the obstacles to be overcome was the persistent attempts of some members of the Common Council to discredit and degrade him personally. Either obstacle alone would have proved enough to stop any other man than a "legal Hercules," as he had been well designated. But between the time of the Commissioner's appointment in 1859 and its entering into new premises in the year 1885, the business of his Court continued to increase, notwithstanding that during the whole of that period the Court itself was located in an unsuitable building, that its Judge was involved in not less than half a dozen formidable legal battles, and that its officials were at variance with each other. Moreover, some success attended the Judge in his own legal battles. Four of these were between him and the Corporation, viz. (1) the battle of privilege, (2) the battle of the inquiry, (3) the salary battle, and (4) the Seal and constitutional contest. Of these the first and last may fairly be regarded as drawn battles. In the second and third the Judge was victorious. Of his two battles with the High Court he could claim that although he formally and apparently lost one (viz., No. 5 of his battles), or the remitted actions battle, he substantially and in reality gained the point for the sake of which he had in truth fought it; while he was unquestion-

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ably victorious in No. 6 of his battles, the battle of the notes. Except in battle No. 5, where he "rode for a fall," he was never even nominally defeated.

To describe the sort of building then used as a Court of Justice will not require many words. It was in the winter so cold as to be openly the subject of complaint from the members of the Bar who had to practise in it. There was, indeed, a machine in it for supplying warm air, but it had been condemned. The boiler underneath was described by the Commissioner as possessing four safety valves, and thus furnishing conclusive evidence that there must be considerable danger in connection with its use. The general condition of the Court was well described by a solicitor, who contrasted the excellent work done in this wretched place with the building itself in a letter worth reproducing in full, and copied from the *City Press* of January 25, 1862, in the language following :—

SIR,—As a constant practitioner in the Sheriff's Court allow me, through your columns, to call the attention of the City authorities to the wretched accommodation afforded by the present building for the Judge and his staff, the suitors, and the profession. On the one hand, the attractions to a professional man to take cases to the Sheriff's Court are many ; business is cheaply, quickly, and efficiently despatched. The Judge, his deputy, and every officer of the Court from the highest to the lowest, strive to promote the convenience and the despatch of business of the suitors and the profession, presenting a very marked contrast to the conduct of the officials (judges included) in several of the Metropolitan County Courts, who seem to make it their first object to put hindrances in the way of those who come to transact business.

During the past year I have, in the Sheriff's Court, recovered for clients of the working class, chiefly Cornish miners, very large sums

Condition of Court

of money, which would not have been so quickly and cheaply recovered in any other Court, and I am glad to bear public testimony to the value and efficiency of an institution of which the City may be justly proud.

On the other hand, the influences which repel one from the Court are such as human nature shrinks from. The space covered by the Court House is large enough, if well laid out, to afford a roomy and convenient Court room and offices, but words are wanting to me—and if I had them you could not afford the space—to describe the arrangements of the present building, which must have been designed and erected under the superintendence of the genius of “How-not-to-do-it.”

The congregation of Essex Street chapel used to boast they had the only place of worship in London “on a first floor,” and a similar remark is applicable to our Sheriff’s Court. Whatever my Essex Street friends may say of their place, I trust the Hon. Corporation will in mercy quickly restore us to the ordinary level of Courts of Justice.

Often I am summoned in a hurry to attend the Court. I find the narrow and inconvenient staircase, the landing and above all the doorway, thronged by a crowd of persons brought there by that mysterious law which fills all Courts of Justice with assemblages, a majority of whom have nothing on earth to do there.

I struggle through this interested and yet unconcerned crowd, who resent my attempts to enter as an injury, and often, let me say, I owe my entrance solely to a heroic charge on the phalanx of my obstructors, made by two or more officers of the Court. These difficulties being overcome, I am in either a Turkish bath or the Temple of the Winds. In November and December last I was frequently in the Court until 6 p.m., and retired in that pleasing condition in which I should have been had I gone through a Turkish bath in my clothes. Lately we have undergone a striking, if not a pleasing, change, and the Court has resembled a well tempered by icy blasts, which would do honour to Dr. Reid himself. Having passed nearly the whole of the 16th inst. in this atmosphere, and having paid £6 for Court fees on that date, I feel I have a right to ask why the suitors and their advisers have not better accommodation. I perceive the learned Judge, while preserving the proper judicial costume of wig and gown, is compelled to shelter his legs in a railway rug; and lately, the officers of the Court have one and all

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given outward and visible signs of distress, from rheum, catarrh, and all other evils in which flesh—sitting at the bottom of the well with an icy draught blowing on it—is heir to. Nor in enumerating the victims of the Court, must I forget the reporter, who is exposed to a miniature gale blowing through a crack conveniently left in the wainscotting of the Court room.

I am, &c.,

A SOLICITOR.

To entirely set out in full detail the story of all the struggles between Commissioner Kerr's enemies in the Common Council and the Commissioner, and the means by which the Judge from time to time tried to obtain from the Council a salary raised, as he considered, in proper proportion to the additional business he had obtained for the Court, would be a very long and disagreeable task. The reader would, moreover, grow weary of the sorry story long before it was finished. Yet a biographer who ventured to pass in silence wholly over these disagreeable occurrences in the career of the Commissioner would be justly taken to task by critics of his Memoir. Yet it can do no good, and be agreeable to no one, to reopen more closely than is unavoidable the history of what may, in the language of the present day, be best described as "regrettable incidents."

No trouble worth recording appears to have arisen—if indeed any occurred at all—between the Commissioner's election in 1859 and the year 1865. Then there happened an incident which was the letting out of the waters of a long and lamentable strife. The Commissioner had, until 1865, gone on successfully developing the business of his Court, and apparently content with his salary. But the Lord Chancellor, in

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the year last named, had introduced a Bill giving an Equity Jurisdiction to County Courts and extra remuneration to the County Court Judges for exercising it. The clause in it which dealt, in a similar way, with the City of London Court had, as was afterwards officially explained, somehow dropped out of the Bill. The discovery that this had happened was not made till the Bill had reached a late stage. The Law and Parliamentary Committee of the Common Council were anxious to obtain this Equity Jurisdiction, but had omitted to consult the Common Council itself. At the last moment an interview was arranged with the Lord Chancellor. His Lordship having from illness become unable to see them at the time appointed, had desired that the City Remembrancer and the Commissioner should each submit to him a clause. This both officers did, and his Lordship accepted Commissioner Kerr's. Then arose an outcry. For it was said that the Commissioner's clause, which the Lord Chancellor had accepted, not only secured to the Court the desired Equitable Jurisdiction, but was also so drawn that it secured that the Judge, by whom the Equity Jurisdiction conferred by the Act was to be exercised—that is the Commissioner himself—should receive the *maximum* remuneration made payable under the Act to any County Court Judge. All this, it was said, had been done, behind the backs of the Common Council ; and it was further described as an imposing upon it of an obligation to make an additional payment to the very officer who got the clause inserted. The Commissioner's zeal to get the Equity Jurisdiction for his Court was clearly no answer

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to the technical complaint of breach of privilege—in that he certainly had, by the clause giving Equity Jurisdiction to the Court also given himself a statutory salary. The fact was undeniable, and the Law and Parliamentary Committee, to whom the matter was referred for inquiry in May, 1865, so found ; but they added that it was desirable that the Equity Jurisdiction should be obtained, and that the offence of breach of privilege “ had been committed without due consideration.” This view was adopted by the full Court of Common Council. It is, however, a significant fact that the resolution declaring Commissioner Kerr’s action to have been a breach of privilege, was seconded by a member of the Court who, on the next occasion, took an active and prominent part in obtaining the inquiry which will be mentioned presently. Under the circumstances, no one will feel surprised, however, to learn that nothing further appears to have been done on this occasion.

In the December following (1865) the question of what extra remuneration should be paid to the Commissioner was referred to the Officers and Clerks Committee. This Committee, in order to adjust such amount, made a general inquiry into the duties and emoluments of the office held by the Commissioner. They, as the result of their inquiries, at the end of April or beginning of May, 1866, brought up a report in effect recommending that the annual salary of £1,200 a year which had been hitherto received by the Commissioner (£900 as Judge of the Sheriff’s Court, and £300 a year for attendance at the Old Bailey), should be increased to £1,800 a year, being

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an addition of £600 a year. Of this proposed increase of £600 a year, £300 a year was for the new Equity Jurisdiction (that amount being the sum paid to Metropolitan County Court Judges for exercising the additional jurisdiction the Act conferred), and (the salary of County Court Judges being then £1,500 a year, as it still is) the further £300 a year was recommended in view of the increased business (and income) which had been secured at the Sheriff's Court.

The same amiable Common Councilman who had moved, on the previous occasion, that the Commissioner had committed a breach of the privileges of the Common Council (a fact that was, technically, not to be denied), now moved that the above report should be referred back to the Committee. This motion was seconded, moreover, by the same estimable Councillor—himself a professional man, but not a member of the legal profession—who had seconded the breach of privilege resolution. He commenced by admitting that he had a "strong personal feeling." But the Common Council would not tolerate his going into this, and he was, as he phrased it, compelled by it "to sink the personal matter altogether." Nevertheless he went into a number of vague charges, expressed in strong language, promising to give particulars of these charges when the Committee's report was again brought up! On these materials the report, a summary of which has been given above, was referred back to the Committee by a very large majority.

Emboldened by this success, the Commissioner's enemies in the Common Council moved, two months

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later (July 5, 1866), for a general inquiry by the Committee into the way in which the Commissioner discharged his duties. An active part was again, of course, taken in the discussion of this motion by the mover and seconder of the original "breach of privilege" motion, just as they had before been active in getting the Committee's recent report referred back. But one of these persons—the professional man previously referred to—during the debate betrayed the real motive secretly actuating him, by declaring that he "believed the inquiry would be a sham instead of a fearless and searching one, constituted as the Committee was." And yet he pressed for that inquiry! It was granted by a majority of more than two to one. This, doubtless, greatly satisfied those who had moved for it.

The result of the inquiry had hardly so much gratified them, as one of the bitterest of their number had foretold that it would not. On November 1st following (1866) the Committee, which had been charged to inquire into the Judge's conduct, asked to be allowed to present their report "out of the usual order of business." As it had transpired that the committee had, "after full consideration agreed upon a report, the effect of which was, it was understood, to completely exonerate the learned gentleman from the charges that were made against him," this request to be allowed to present the report "out of order" on the paper offered too good an opportunity for dilatory tactics to be neglected. In the game of "dilatory tactics," the Commissioner's assailants could "give points" to the Irish Party in the House

The Battle of the Inquiry

of Commons of some twenty years later, and could, indeed, afford the latter valuable instruction. For no less than six amendments were successively moved, suggesting that other business of various kinds should be entered upon before the report was received. A seventh amendment, to the effect that the election of an Inspector of Cattle should next take place was being "pressed for" by the individual already referred to as so active in spite of his own professional position, when the Lord Mayor, the hour being late, asked to retire. His request was granted, and the Common Council adjourned. Its next meeting would not take place for a fortnight.

The fortnight's adjournment had a good result. On November 15, 1866, the report was again brought up, when the Chairman of the Committee made a conciliatory speech, and the professional man, who had previously taken so active a part in promoting the inquiry, testified to the care and courtesy of the Committee, and agreed with a statement that had been previously made by another member of the Committee, who had spoken strongly in the Commissioner's favour, that, "after hearing the evidence which had been given, the members of the Committee could have come to no other conclusion than that which they had arrived at." Notwithstanding all this, one member of the Common Council thought it decent to express himself in terms of hostility to the Commissioner. His remarks, however, had probably an exactly contrary effect to that which he had intended them to produce; for they betrayed pretty clearly both the motives and the materials on which the attack

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on the Commissioner had been originally made. Motives, unworthy of the occasion, were in effect confessed to, and weight lent to the statement, which had previously been made openly in the Court, that the whole discussion had arisen in consequence of the Commissioner having decided a 40s. dispute against a member of the Common Council. On this occasion, too, the speaker showed his *animus* by avowing that a "gentleman" had been present when the partisan who had been previously so active "had been insulted." The materials for the attack appeared miserable and contemptible, when it transpired that the Commissioner, who always loved his little joke, had, humorously, as he no doubt intended, during the opening speech in an action against a butcher for his boy having done some mischief while driving his cart, said first, "who could take a butcher's man's word," and afterwards, "we shall have no security for human life till a few butchers' men are hung, or obliged by Act of Parliament to drive horses with one wooden leg!" These jocular remarks had been solemnly and seriously divided into three statements by the Commissioner which were said to be "strong evidence of hostility against the trade of a butcher" being entertained by him! It had also been stated that a defeated defendant in another case (a cab case) had himself attended the Court at the trial, and had left "with a thorough conviction" that "his man" was right, in spite of the wicked Commissioner having decided otherwise!

But the adoption of the report, exonerating the Commissioner from all blame, in the most complete

The Seal and Constitutional Contest

way, did not dispose of the question which had originally given rise to the strife. It may be recalled that this originally was as to the additional salary to be paid to the Judge of the Sheriff's Court for discharging the new duties imposed on him by the increase in the business of the Court, and by the Equitable Jurisdiction Act. At last on May 30, 1867, the Committee reported also on this. They again recommended an increase of the Commissioner's salary by £600 a year. After an animated debate the Common Council adopted the report, with, however, the increase of £600 a year cut down to one of £300 a year only, thus making the Commissioner's total salary thereafter £1,500 a year.

Meanwhile serious and numerous other troubles had developed in various directions.

The most important of these arose out of a provision in the County Courts Act, 1867—by which (sec. 35) the two Sheriff's Courts hitherto in existence in the City were consolidated into one Court of Record, which was to be called "the City of London Court."

The Commissioner, in common with not a few others, including the *Law Times* newspaper¹ and also the Registrar of the Court, with whom, as it happened, he was, as will be presently seen, at that time at variance in other respects, took the view that the new enactment had the effect of altering the entire constitution of the Court over which he presided. From being the ancient Court of the Sheriffs of London it, in his view, had now become

¹ See *Law Times* of October, 5 1867.

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simply an ordinary County Court—though the County Court for the City of London. This view, assuming it to be correct, at once involved two very important consequences.

In the first place, all legal process issued by a Court of Justice must bear a Seal to authenticate it. Hitherto the seal used had been one showing the arms of the City of London. But if the Court were no longer merely a local Court, and now was one of the ordinary Courts of the country, as a new County Court, the Commissioner thought it followed that it ought to accordingly now have a seal like that of other County Courts, or at any rate, some new seal on which the Royal Arms were shown. He accordingly ordered such a seal, and directed it to be stamped upon all "process" issuing out of the Court.

Then arose a great storm. The Police authorities in the same year had taken a view of some other legislation as to the City, similar to that which the Commissioner expressed about the seal of the Court. The Common Council were up in arms concerning what had occurred as to the seal of the City County Court. The Commissioner insisted that all "process" should bear his new seal, and threatened to dismiss every action in which the summons was not stamped as he had directed. The Corporation insisted on the use of *their* old seal. The question at first sight looked a petty one. But, as Mr. Justice Willes said afterwards, it was really a "vital" one, seeing what substantial legal questions were in truth involved in it. Things were apparently

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at a deadlock, when a certain Mr. Torr, a subordinate official of one of the Metropolitan County Courts, suddenly appeared as a *deus ex machinâ*, and as the newspapers of the day at once hastily proclaimed, "cut the Gordian knot" by obtaining from Mr. Justice Willes an Order for a prohibition restraining the use of the Royal Arms on the Commissioner's new seal. The newspapers, however, were a little premature, and had rather reckoned without their host. For when his Order for a prohibition had been drawn up, Mr. Justice Willes quashed it, as not in accordance in form with certain directions he had given, and desired the parties to appear before him. The learned Judge just named was one of the greatest and most profound of the lawyers who have ever sat on the English Bench, and certainly one of the very best of the many excellent Judges who then occupied it. He by no means made light of the Commissioner's point, at once seeing and acknowledging that it had been rightly raised, by Mr. Kerr, inasmuch as he said that "the regularity of the proceedings of the Court was risked, and the interests of the suitors gravely imperilled." As appears by a report in the *City Press* of April 4, 1868, the learned Mr. Justice Willes took much trouble over the matter, and characterised the question as "one of vital importance to the public." Finally he gave a new Judgment of Solomon, since he held neither party to be entirely in the right, and thought that, just as the Government had on their being created provided the Seals for ordinary County Courts, so the Corporation ought

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to have provided a new seal for the newly-created City of London Court, but that it ought to have been one approved of by the Judge of that Court. This might, at first sight, be claimed as a victory for the Commissioner. But it cannot fairly be regarded as entirely so, since the House of Lords subsequently (in 1871)¹ decided, and the Court for Crown Cases agreed likewise, that the contention (the one which the Commissioner had adopted) that the constitution of the old Sheriff's Court had been altered by the County Court Act of 1867 was erroneous. Under all the circumstances, this fight ought therefore rather to be regarded as a "drawn battle."

The question of how the constitution of the Sheriff's Court had been affected by the County Courts Act, 1867 (sec. 3), gave rise to another most important consideration. The Commissioner sat at the Old Bailey as a "Judge of the Sheriff's Court." But if the Sheriff's Court had been abolished, and there no longer was any Sheriff's Court, its late Judge could not, of course, sit elsewhere under an authority which was conferred upon him only as a "Judge of the Sheriff's Court." So seriously did the Aldermen regard it that they appointed a special committee to consider and report upon it. Naturally, and most properly, the Commissioner raised this question, and declined to any longer sit at the Old Bailey till the point had been determined, as it obviously was of so very serious a nature. In the end, as has

¹ In the dispute between the Registrar and the High Bailiff, known and reported as *Osgood v. Nelson* (L. R. 5, H. of L. 636).

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already been stated, the House of Lords determined that the old Sheriff's Court still remains, under a new name, notwithstanding the County Court Act, 1867. By the next year (1869), it had become sufficiently evident that this view would ultimately prevail, and the Commissioner accordingly felt then justified in agreeing that he would in future sit at the Old Bailey. But his action in raising the question at first was, beyond doubt, most well judged and correct. For supposing he had, without raising the point indicated, himself sentenced a prisoner to be hung, or even to suffer a long term of penal servitude, or of imprisonment, it might have caused a serious public scandal if the question of his authority to try the prisoner at all had been first raised by the Counsel for the defence, after conviction and sentence, and if it had been then decided (as the doubts of the learned Mr. Justice Willes show that it was reasonable to anticipate it might possibly have been) that the constitution of the Sheriff's Court *had* been altered, and that the jurisdiction of the Commissioner, as such, was consequently gone.

Concurrently with these differences between the Judge of the Court and the Common Council, its officers were unfortunately now at variance with one another. An absurd dispute had arisen between the Registrar and the High Bailiff as to which of them ought to discharge the duty of handing the papers up to the Judge in Court. This small matter had grown into a serious one. The Common Council had removed the Registrar, and had appointed Mr. Nelson, the City Solicitor, in his place.

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As the City Solicitor was too much otherwise engaged to regularly attend the Court personally, the Judge had, on several occasions, appointed a Mr. Weatherfield to discharge his duties in his absence; Mr. Weatherfield was suing for his fees for acting as Registrar, and a jury had, in the Major's Court, expressed an opinion that they ought to be paid, and given him a verdict for them. Mr. Osgood, the removed Registrar, was meanwhile, by legal proceedings, contesting the right of the Common Council to remove him. His main contention was, as was also the view of the Judge, that the constitution of the Sheriff's Court had been totally changed by the County Court Act of 1867; that, by the statute named, a new City Court had been created, which was an ordinary County Court, and that the Common Council's power to remove officers conferred by the local Act of 1852, consequently existed no longer.

The decision of Mr. Justice Willes about the Seal had in itself not helped matters. But it had been quietly followed by others which, in truth, placed things in train for a settlement. Mr. Justice Willes' original decision itself had, indeed, settled one hotly debated point—the proper Seal of the Court. It, however, had left another in serious doubt—that, namely, as to what was now the real constitution of the “City of London Court.” Was this still the old Court, or had it, by the Act of 1867, been made an entirely new and modern County Court? The final decision, in the case of Mr. Osgood, the Registrar, would settle this; but some light as to what this was

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likely to be had been already thrown upon it by decisions already given. The Court of Queen's Bench, and the Exchequer Chamber, had already decided that the Court's constitution had *not* been changed, and there only remained an appeal to the House of Lords. Moreover, the point had been raised already, and similarly decided in the case of the notorious Madame Rachel,¹ whom the Commissioner had tried at a second trial, after the Jury at the first trial, before the Common Serjeant, had failed to agree. The point had then been taken that Commissioner Kerr, having ceased to be a Judge of the Sheriff's Court, because that Court had ceased to exist, could not any longer sit at the Old Bailey in his old character as a Commissioner appointed to be so, but merely as Judge of the Sheriff's Court.

The Commissioner was entirely dissatisfied with the decision of the Common Council as to what they would do about his salary. He therefore decided to acquiesce in the proposed arrangement as to other salary, but claimed to be compensated for the work under the new Equity Jurisdiction Act by the payment to him of nineteen-fortieths of the fees received under that Act. The Small Debts Act of 1852, by which the Sheriff's Court was governed, provided that nineteen-twentieths of all fees received should be paid to its Judicial Staff, unless an agreement had been previously come to by which it was commuted into a salary. Said the

¹ As to this trial see fully *post*, Chap. VII.

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Commissioner, "Grant that I did commute all fees for a fixed salary in 1859, obviously this only included all then existing fees, and cannot be stretched and made extend to fees received under a new statute only passed in 1867, imposing duties not existing in 1859, and it cannot, in the absence of express words, making it do so, be by any reasonable construction taken to have been concluded or come to in 1859." To test this question, the Commissioner in Trinity Term (May-June), 1868, took legal proceedings in the Court of Queen's Bench to enforce his construction of the agreement and of the new Act. The Court seemed to be disposed to agree with him.

At this juncture both the press and the public urged that a friendly settlement ought to be arrived at. The Commissioner agreed to this view, and negotiated with the Corporation. Then the Corporation appointed a Special Committee in January, 1869. The result of a meeting between them and the Court was that on Friday, June 4, 1869, the Committee reported that an amicable settlement had been arrived at with the Judge, and the Common Council, in due course, adopted their report.

The terms of the arrangement thus come to in June, 1869, are stated in a report contained in the *City Press* of Saturday, June 12, 1869. They were these :—

1. That the Judge shall sit as one of the Commissioners of the Central Criminal Court for the trial of prisoners, on the first Wednesday in each Session and on any other day or days when requested to do so by the Recorder, and be ready, during the Session, to occupy the place of the Recorder or Common Serjeant if either be unable to attend.

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2. That, in consideration, and upon the express condition, of all claims made by the Judge against the Corporation being entirely withdrawn, and all differences being considered as settled, he should be paid a salary of £1,800 per annum, commencing from the 1st day of January, 1868, as Judge of the City of London Court, in addition to the £300 per annum received by him as a Commissioner of the Central Criminal Court, and that he should be paid the sum of £105 in respect of any such claims.

3. That, with respect to the suit pending between the Judge and the Corporation, relative to his claim to certain fees, Counsel be instructed on each side, and inform the Court of Queen's Bench, that the Court of Common Council have agreed to give the Judge a salary which he has consented to accept in lieu of fees, and that there will be no judgment, the matter having been amicably arranged.

4. That, with respect to the small amount now in the hands of the Chamberlain, under the Friendly Societies Act, the Committee do not propose to interfere, the matter not being strictly referred to them.

5. That no claim shall be made by the Judge in respect of the fees for the Admiralty jurisdiction, but that whatever is done by Parliament, or the Treasury, to remunerate other County Court Judges having Admiralty jurisdiction, for their services in that respect, the Corporation shall either do, or concur in doing, for the Judge of the City of London Court.

6. In any future legislation affecting the Court, either by extended jurisdiction or otherwise, the Judge should be placed in the same position as other County Court Judges under similar circumstances.

7. That all fees arising, or which may arise from, the jurisdiction of the City of London Court, unless otherwise provided by statute, be paid into the Chamber to the account, and to the credit of the General Fund.

8. That the Judge conform to the provisions of the eighth section of the London (City) Small Debts Act, 1852, as regards the appointment of a Deputy Judge.

9. That, considering the probable early determination of the case of the late Registrar of the Sheriff's Court, it is not desirable that any change shall take place in the appointment of the Registrar *pro tem.* of the City of London Court, but, in the event of the decision in the Court of Error being in favour of the Corporation,

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it be recommended to the Court of Common Council forthwith to appoint a duly qualified Registrar.

10. That the Judge, when requested, shall advise the Corporation, or any committee thereof, as to any question affecting the City of London Court, and that he shall, in any future legislation, concur in the protection of the authorities, rights, and privileges, of the Corporation, under the Act of 1852.

It was well that the terms of this great General Peace of June, 1869, almost compelled the Corporation to leave the adjustment of the amount to be paid for the exercise of the Admiralty jurisdiction in the hands of the same committee as that by which the main terms of the settlement had been adjusted. All trouble in the past had arisen, just as all future trouble was destined to come about, from the Common Council, a large and somewhat unwieldy body, being unable to understand properly technical considerations to which a body of lawyers, such as the Law and City Courts Committee contained, would give due weight. In the course of the long controversy which had arisen previously, it will have been observed that the Law and City Courts Committee had never once reported otherwise than favourably to Commissioner Kerr. On one occasion, indeed, a Special Committee had reported that there had (technically) been a "breach of privilege," but even it hastened to add that this had only arisen from "want of due consideration." On the other hand, when Commissioner Kerr's chief opponent in the Common Council had served on a committee to make inquiry, and had been thus obliged to go into matters by the rules of evidence, and not by the blind chance of mere gossip and prejudice founded on loose conversation, he found himself compelled to

Great General Peace

agree with the rest of the committee in exonerating Commissioner Kerr, and to even confess that the committee could, on the evidence, not have come to any conclusion other than that at which it had arrived.

A later arrangement, come to on March, 1875, made the Commissioner's total salary £2,100 a year. At this it remained for about twelve years. The remuneration to be paid for exercising the Admiralty jurisdiction was purposely left in abeyance for the moment.

The great General Peace, as we have called it, effected by the agreement to the above terms on June, 1869, proved a lasting one, for the Corporation gave effect to it in a broad and generous spirit, and for some time afterwards dealt indeed with the question of the Commissioner's salary with no mean or niggardly hand. It at first, indeed, looked as though this arrangement would not produce any lasting harmony, and some appearance of friction arose over the salary to be paid to the Commissioner for exercising Admiralty jurisdiction. As has been remarked, the Great Peace purposely left the amount to be paid under this head in abeyance, in order that it might be seen what the Government did for the County Court Judges. When the Government decided to make no addition to the salaries of those Judges who sat in Admiralty, the Corporation for the moment thought that they also could properly act in the same way and make no further payment. But it was pointed out that the agreement of June, 1869, clearly contemplated *some* payment, merely leaving the amount for future settlement.

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And, moreover, it was further pointed out that, while County Court Judges were bound to undertake any work imposed on them by Act of Parliament, the Commissioner was not a County Court Judge, subject to the jurisdiction of the Treasury and with all the duties of a County Court Judge. If all parties agreed, the Commissioner doubtless could be given the exercise of jurisdiction in Admiralty. If, however, the Corporation of London desired to possess a right to exercise this jurisdiction, they found that they would only be let have it subject to their making arrangements to properly pay the Judge by whom it was to be administered in their behalf. In short, the Lord Chancellor could not compel the Commissioner to exercise an abnormal jurisdiction at the mere wish of the Corporation and for their benefit without being paid for so doing. This was brought home to the City in a very practical way. The Lord Chancellor altogether rescinded the Order giving Admiralty jurisdiction to the City of London Court, though the Commissioner only wished it to be suspended until the making of satisfactory arrangements. His Lordship let it also become known that he had it in contemplation to bestow the Metropolitan Admiralty jurisdiction upon the Whitechapel County Court. To induce him to give this jurisdiction back to the City, proper arrangements were made for the payment of proper remuneration to the Judge by whom it was proposed that it should continue to be exercised. It was not, however, till March, 1875, that matters were finally arranged. It was then agreed to give the Commissioner £1,000 for past services, and to pay

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him £400 a year as from January 1, 1875, for the future exercise by him of the Admiralty jurisdiction. It was this addition of £400 a year to his salary as Judge of the Sheriff's Court that made the Commissioner's total income from that Court now £2,100 a year, in addition to the £300 a year which he received as a commissioner of the Old Bailey, in other words, gave him a total income of £2,400 a year from the two appointments.

In 1875 the total amount levied for Judge fees by the Sheriff's Court were under £5,000 a year. They continued to increase year after year, as can be seen from the official returns in Appendix A.

For twelve years after the arrangement of March, 1875, the salary remained unaltered. But in 1886 the Corporation, again acting in the same proper spirit as they had when the Great Peace of June, 1869, was concluded, and on the recommendations of their Law and City Courts Committee, generously increased the Judge's salary to £2,450 from 1886, to which a further £250 a year was added at the beginning of 1887. By this time the fees earned by the Court for Judge's fees had reached an average of about £7,000 per annum. The Court's total earnings by fees from suitors subsequently in one year amounted to over £22,000, though in some subsequent years they fell a little short of this large amount. When this happened, the Corporation made another considerable rise in the Judge's salary, under circumstances which will be discussed in a later chapter.¹

¹ See *post*, Chapter on "The Development of the City of London Court," &c.

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The termination of his battles with the Corporation did not, however, yet mean for the Commissioner entire cessation from all conflicts by him as to the manner in which he exercised his Court's jurisdiction. In the first of two battles on this subject which he was destined to fight with the Superior Courts, he had indeed become engaged even before a final adjustment of his salary for exercising the Admiralty jurisdiction had been made in accordance with the Great Peace arranged between the Corporation and himself in 1869.

A County Court Act, passed in 1867, had for the first time given power to the Superior Courts to entirely transfer any action pending in either of them to some convenient County Court, for it to dispose of. The Commissioner's first trouble with the Corporation had grown out of the passing of the County Court Act of 1865, by which an Equitable Jurisdiction had been conferred upon County Courts. It was also destined that he should (at all events apparently) come into conflict with the Queen's Bench over a provision in a subsequent County Court Act, passed in 1867, giving power to transfer actions from one of the Superior Courts to a County Court.

It had, as we have seen, been distinctly laid down by the House of Lords in Mr. Osgood's case, that of the Registrar whom the Corporation had superseded, and also by the Court for the Consideration of Crown Cases Reserved, in the case of Madame Rachel, that the constitution of the ancient Sheriff's Court still remained, though in a revised form, as it had been established by the local Act, the London (City)

The Remitted Actions Battle

Small Debts Extension Act in 1852. But if the Court was not a "County Court," how could actions be transferred to it under the authority to transfer to some "County Court," which had been conferred by the Act of 1867? The answer suggested was that, though the Sheriff's Court was not a "County Court," the Act of 1867 had directed that, for the purposes of *practice*, it should be considered as being included *amongst* County Courts. The enactment, however, was new, and had not yet been the subject of much judicial decision. It was quite possible that the decision of the Court first dealing with the point just named would be largely influenced by the form in which the question suggested chanced to come before it on that occasion. If it came up for consideration under circumstances favourable to the City Court's jurisdiction, it would probably be held that actions from the Superior Courts *could* be lawfully transferred to the Sheriff's Court of London. If a suitor, having some seeming grievance or injustice, of which he was entitled to complain, first brought the question before the Court, the tribunal might possibly be ready enough to do him justice, by even holding, if it did not see its way to reach that result in any other fashion, that it was technically wrong to transmit an action to the Sheriff's Court of London from the High Court, since the former was not a County Court. To entertain remitted actions was obviously under the circumstances attended with some dangers, which the Commissioner pointed out to the Queen's Bench, when opportunity arose. To decline jurisdiction was contrary to the general policy of the Commissioner, who always

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desired to obtain jurisdiction whenever he could, and certainly wherever any County Court possessed it. Moreover, to decline the jurisdiction would also be opposed to the wishes and interests alike of the Corporation and himself, since the fees to be obtained from remitted actions, bid fair, even at that time, to become considerable. These fees, indeed, now form a very substantial part of the revenue of the City of London Court, which might be, still even now, very largely increased, were proper arrangements made to further encourage remitted actions being sent to be tried by the City of London Court.

All these obvious considerations, we may be sure, presented themselves in full force to the mind of so shrewd a man as the late Commissioner. But to get a decision on the point, under conditions favourable to the jurisdiction, was a delicate and difficult matter.

The ingenuity of the astute Commissioner was, however, quite equal to the emergency. He one day, in 1874, accordingly objected to try a remitted action—a case of *Blades v. Lawrence*—upon the seemingly technical and trivial ground that the Judge's signature to the Order, by which the action was "remitted" to his Court, had been affixed by an impressed stamp, and not by the Judge with his own hand. Further inquiry had made it appear that the Judge, by whom the Order purported to be signed, had never exercised a judicial mind—nor indeed any mind at all—with regard to the matter. The clerks to the respective solicitors had agreed that there should be such an Order, and, having so agreed, had got a Master to initial the agreed Order, as endorsed

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on the summons, and thus to authorise a Judge's clerk to affix his master's signature to the Order by stamp in the usual form. Such a practice is common and of daily occurrence, and the Commissioner was not the man to be ignorant of it. However, here came an excellent opportunity of raising the desired question of jurisdiction without seeming so to do, and that under cover of an almost childish technicality. The Commissioner seized it, and declined to try the remitted action. The parties, in great indignation, went to the Court of Queen's Bench for a "Mandamus" to compel him to do so. The Court, fortunately, consisted of a very impulsive Chief Justice, with two puisne Judges. They at once all shared the indignation of the parties that so trivial and untenable an objection should have been raised by the Commissioner, and wrathfully ordered him to forthwith proceed with the trial of the case. Their attention was given almost exclusively to his conduct in the matter, and very little heed was apparently given to the really important question of law really raised in the case. This was exactly what was desired to get the jurisdiction of the City of London Court assented to. And, not content with a mere decision, the emotional Chief Justice declared that the Commissioner had been "almost contumacious," and directed that he should, in consequence, pay all the costs. The "canny" Commissioner of course duly paid these, but even if he did not quietly get the Corporation, whose Law and City Courts Committee probably appreciated what had taken place, to directly reimburse him the amount, he probably, thrifty Scot as he was, never parted with money with

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more pleasure than when he paid these "costs." The expenditure was repaid over and over again. For the decision, by placing beyond all doubt the power of the Court to entertain remitted actions, added very substantially to the revenues of the City of London Court (in which such fees now amount to many hundreds a year), and thus, indirectly, led to large increases of his own salary!

The Commissioner had cleverly "ridden for a fall," and had seemingly sustained a bad one. His device for thus getting by a side wind a decision in the Corporation's favour, and upholding the jurisdiction of its Court to try remitted actions, had succeeded excellently well. The astute Commissioner had, however, pointedly drawn the attention of the Court to the "points against him," and to the really serious considerations which were involved in the case. It could not therefore have been said that the decision had been arrived at either *per incuriam*, or in consequence of the Court not having been furnished with proper material. The Judge of the City Court had expressly pointed out in an affidavit, which will be found duly set out in the legal reports of the case,¹ that inasmuch as the cause was, by the Judge's Order, transferred altogether into the City of London Court, "It may become the Judge's duty to direct further proceedings therein, and it may be to order the committal to prison of one or other of the parties in the action, or of a witness called and examined therein." However, Chief Justice Cockburn, in his judgment,

¹ At p. 374 of *Blades v. Lawrence* (1874), as reported in L.R. of Q.B. 374.

The Battle of the Notes

said (at p. 377) that "In giving power to the Superior Courts to send down cases in certain circumstances to the County Courts, the Legislature meant to assimilate the London Court to the County Courts." Mr. Justice Quain remarked (at pp. 378-9) that "The object of the Act of 1867, by sec. 35, was to bring that Court into the category of County Courts for all general purposes." Echoed Mr. Justice Archibald (at p. 379), "The object was to put the London Court and its Judge upon precisely the same footing as the County Courts."

For twenty years after the decision (1874) in *Blades v. Lawrence* Commissioner Kerr did not again appear before the Courts of Law as personally a party to any legal proceedings. During the greater part of this long period he had persisted in a refusal to habitually take notes. By English Common Law no Judge is compelled ever to take any note at all, even in a criminal case. But in 1875 the County Court Act of that year (sec. 5) rendered it obligatory on any County Court Judge, before whom a specific point of law had been raised, to take a note of the point so raised, and of the facts and evidence in relation thereto. This, indeed, is still the law. The statutory requirement that in such cases a "note" shall be taken was imposed on the County Court Judges because, in former days, a party defeated in a County Court was not (as, in theory, he is not now) allowed to appeal to a higher Court, except on some "question of law," as distinguished from mere question of fact, which had been distinctly and definitely raised by him in the County Court; and sometimes considerable difficulty arose in saying whether a point

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of law, relied on as a ground for appeal, had or had not been really taken in the County Court. At the present day a point of law, which it is wished to appeal about, should the decision be adverse to the party raising it, can be taken after the trial, if need be, by a motion for a new trial, the County Court Judge's Order as to which can itself be made the subject of an appeal. But in those days this could not be done, so that it was then more important than it is even now, that, if a point of law were raised at a trial in the County Court, the Judge should, on being asked, take such a note of the point as the statute required.

The Commissioner was, at all periods of his life, scrupulously careful to exactly comply with the requirements of any statute whenever properly asked to do so. An idea somehow got abroad, however, that he *never* took a "note." This erroneous notion probably arose because under ordinary circumstances he had for years been in the habit of not only saying, "I never take a note," but of, in fact, never taking one. After the new Act was passed, however, he did take a note wherever *the statute applied and compelled his doing it*. But in such a busy Court as the City of London Court is, or at all events was, while Commissioner Kerr ruled there, it was a sheer physical impossibility to take a note of every case. Case then succeeded case there with such rapidity, and "points" were so freely raised and at once disposed of, by a lawyer of the ability and decision possessed by the Commissioner that no time to "take notes" existed. It was once said by a member of the Court of Common Council, who had visited the Court, that he thought

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the cases there were dealt with at the rate of one a minute. This was, of course, rather an exaggeration. But the speed in the Court was certainly great, and would take away the breath of an ordinary *Nisi Prius* Judge of the High Court, who thinks he has done a good day's work if he tries six or eight cases a day, many hours during which are usually spent in listening to the speeches of Counsel. At the City of London Court it used to be no unusual thing for the Judge to go into Court with a list of 150 summonses returnable that morning. Any one of these might turn out to be a substantial case, but the list had somehow to be disposed of during the day, for no arrears from one day to another were ever permitted while the Commissioner was Judge of the Court.

That great advocate, the late Lord Russell, when still at the Bar, once asked his junior what he was about? The junior having replied that he was "taking a careful note," Russell rejoined, "What the —— do you mean, sir, by taking a note? You ought to be attending to the case, and let the shorthand-writer do that." This, it is submitted, is exactly the duty of a Judge—to attend to the case. In the humble opinion of the present writer it is at least extremely doubtful whether the practice of many Judges of habitually "taking a careful note" in every case is really a good one. While the Judge's whole attention is occupied, and even absorbed, by his anxiety to get a neat note, he misses very much that is going on around him, his notice of which would often help him to give a correct decision in accordance with the justice of the case. The present writer has had

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more than seven years' experience of the system which the Commissioner prevailed on the Corporation to adopt instead of the slow and tedious process of "taking a note," still usual in many courts, and once invariable in all. An official shorthand-writer was, at the Commissioner's instance, attached to the City of London Court, and he takes down in shorthand *verbatim* the entire proceedings (except formal speeches) in each disputed case, without charge of any sort to the parties. The benefits of this procedure are enormous. A party is enabled to appeal, even where he has forgotten to formally ask the Judge to take a note under the statute. For, if there be *in fact* a note in a case, then an appeal can be brought, whether such note was taken after a request to the Judge to do it or not. The shorthand note is invariably available for the purposes of an appeal, since the Judge is always willing to adopt it, and sign it as his note of what occurred at the hearing. During the trial itself the Judge, freed of the mechanical restraint which having to "take a note" himself always involves, is free to watch the demeanour of the witnesses, and the hundred little incidents which occur in the course of every trial. It has more than once happened to the present writer that, when a witness has made a statement and has proceeded—possibly to save his conscience—to qualify in an undertone that which he has just said—his muttered words have reached the Bench, and led to questions which threw an entirely different light upon his evidence to that which it would otherwise have borne. One case has a prominent place in the writer's recollection.

The Shorthand Writer's Use

Nautical witness are, almost proverbially, "hard swearers." In a "salvage" case, where the whole point in dispute was whether any meritorious services, deserving to be paid for as salvage, had been rendered or not, a skilled nautical witness had given strong evidence in support of the plaintiff's claim for salvage. After an unusually "strong" assertion, he, probably to save his conscience, muttered something in an undertone. His words reached the Bench : the Judge and the intelligent shorthand-writer exchanged glances, the Judge desired the remark to be repeated aloud, and when it had been the shorthand-writer noted it. In the course of the judgment the remark was referred to. The plaintiff's Counsel, whose good faith was entirely beyond doubt, said, "I have no note of that : I called that witness to prove so-and-so." The defendant's Counsel had also not caught the words. The shorthand-writer was then appealed to, and desired to read the examination from a point indicated to him. In the middle of his reading came the incriminating admission which, on being recalled "for greater certainty," the witness admitted having made, though only two people in the Court, who were engaged in the case, had caught it at the time. In the opinion of many, an expert shorthand-writer ought to be attached to every Court. However this may be, it is certain that business in the City of London Court could not possibly have gone on with the celerity and dispatch by which the Commissioner performed the work of two men, had it not been for the aid afforded by the presence of a dexterous and rapid shorthand-writer. Where it is not required the shorthand note, which has cost the parties nothing, is

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not transcribed. A less able Judge than the Commissioner might indeed have found it awkward to have his every word at once recorded, but he did not find what would, to some men, have constituted a cruel record to be any inconvenience to him.

At about the time when the Commissioner was said "never to take a note," his friend Sir Peter Edlin, indignant with the County Council at what he considered the miserable inadequacy of the salary paid to him, refused to accept what he regarded as a pittance, and accordingly allowed his cheques for a year or two to remain uncashed. A legal joke, which went the round of the Courts at the time, consequently was that we had two strange Judges, "as Edlin would not accept cash, and Kerr would not take notes."

From time to time, however, the late Lord Coleridge, and some other Judges, misled, probably, by the broad assertion of Counsel that the Commissioner "never took a note"—which only meant that he did not habitually do so, and never did except in compliance with the statute—expressed themselves about the omission in very strong terms. At last, in 1894, the Commissioner got an opportunity of explaining his real attitude and action. On the usual statement that no note had been taken by him, a rule for a "Mandamus" calling on him to nevertheless furnish one was obtained from the Queen's Bench Division, directed to him, and one Hives, the successful party in the County Court. Thereupon, the following affidavit, explaining his practice, was made by the Commissioner in this case of *Reg. v. Commissioner Kerr and Hives*, which was heard by Justices Cave

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and Wright on June 4, 1894, and is reported in the *Law Times Reports* at p. 595 of vol. lxx. Said the Commissioner :—

Whenever a request is made to me under the section of the County Court Act, I always take a note of the point or points of law which are raised, and of the facts in relation thereto, and of my decision thereon, with the reason therefor, and of my decision of the action or matter. A copy of such notes can be obtained by any party to the action, on the same terms as those obtaining in any other County Court in England, and in accordance with the said Act. In every case which is tried in the City of London Court a shorthand note of the proceedings is taken by an official shorthand-writer, appointed by the Corporation of the City of London for that purpose. If any party to the action desires to obtain or use a transcript of the whole of such notes he can obtain it. I always read such transcript, and satisfy myself that such transcript is a correct note of the proceedings, and I then adopt and sign the same as my notes of the case. A transcript of any extract from a portion of such official shorthand notes, referring to any particular part of the case, may also be obtained, but it is not my practice to sign a portion or extract only. These transcripts of shorthand notes are entirely distinct from my own notes, which I make myself, as stated above, whenever a *request* is made to me to take a note under the statute.

The result of the appointment of an official shorthand-writer by the Corporation is that, in cases where I am requested to take a note in compliance with the Act of Parliament, it is open to the parties to obtain both a copy of my own note, and also a transcript of the official shorthand note, or either of such notes, at the parties' option. In cases where I have not been requested to take a note the parties are still at liberty to obtain a transcript of the official shorthand note, signed by me, in accordance with the above-mentioned practice.—*Extract from Commissioner Kerr's affidavit, as set out at p. 595, vol. lxx., of Law Times Report (June 30, 1894).*

The Commissioner went on to say, and in this he was confirmed by the official shorthand-writer attached to the Court, that no request to "take a note" under

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the statute had ever been made to him at the hearing in the County Court of the case then before the Court.

During the argument the Counsel (Mr. Danckwerts) who appeared for the Commissioner, and for the Corporation of London, urged that :—

The suitors in this Court have, through the liberality of the Corporation, a privilege which no other suitors in any Court in this country enjoy, namely, of having a shorthand note supplied. In addition, they have the statutory right of having the short note of the Judge, made in accordance with the Act, whenever the request to take a note is made.—*Reported at p. 596, vol. lxx., of Law Times Reports.*

In giving judgment in the case, Mr. Justice Cave said :—

The learned Commissioner has stated in his affidavit what is the course he pursues, and that course appears to be in exact accordance with the requirements of the Act. In addition to that, more is done in this Court, because, by the liberality of the Corporation, a shorthand-writer is attached to it, who takes a note of the whole proceedings in every case, and when, as may possibly happen, it is impossible to comply with the statute, and raise a point of law beforehand—because, as Lord Bramwell observed, the point may sometimes be that there is no evidence to warrant the final decision arrived at—then comes in the advantage of the course pursued by the Corporation, that there is this note which is available for the suitor in the absence of the note which, under the circumstances, he has not been able to ask the Judge to take. He is not, in my judgment, confined to the note so taken by the shorthand-writer. Where the Judge does not take the note, either because he refuses to take a note, or because the question of law is such that it cannot be raised at the time when he can take the note, then, by leave of this Court—a leave which in such cases would never be refused—the appellant may show what his point of law was, and what the evidence was thereon, by any proof that may be available for that purpose.

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He is not bound to take a copy of the shorthand notes, because that is not the note that is contemplated by the Act, and, in the absence of that note, he may proceed upon his own affidavit. When it is clear that there has been no possibility of getting the regular note taken by the Judge, then he has the choice of either obtaining a copy of the shorthand notes, or else to give an account, upon affidavit, of what happened at the trial, and how it came about that the point of law could not be raised in the ordinary way, and the Judge requested to take a note, so that the suitor would, in some way or other, be able to bring the facts to the notice of the Court.

Mr. Justice Wright entirely concurred in the judgment of Mr. Justice Cave.

At the conclusion of the case, and after the formal judgments had been delivered, Mr. Justice Cave, with the evident concurrence of Mr. Justice Wright, further added :—

It is very important that the public should know what is the practice that prevails in this Court. We see, from the affidavit of the learned Commissioner, what that practice is, and it appears to me the best possible course that can be adopted.

After pronouncements so distinct and emphatic as the above, it might have been hoped that all questions as to Judge's notes in the City of London Court would have been set for ever at rest. But judge-baiting is sport which appears not to be entirely reserved for members of the Common Council. In a case tried by the present writer, he had for his own purposes taken a full note of the argument, without being asked to do so. His object was (as had been done) to go over it carefully afterwards in a Law Library to see if, peradventure, there was any substantial point amongst the very numerous ones raised

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by the Counsel for defendant. He had accordingly paused from time to time to read it to the Counsel and ask whether he had rightly appreciated his meaning. The defeated defendant afterwards appealed without success, and his Counsel having evidently forgotten entirely the incidents, the following occurrence took place.

According to the *Times* of May 20, 1899, in *Harder v. Baker*, reported shortly in that paper—

The only interest in the case consisted in the observations made by Mr. Justice Darling on the question of shorthand notes and Judge's notes in the City of London Court.

At the close of the case to-day, Mr. M—— asked leave to call the attention of the Court to the fact that, as the Judge of the City of London Court refused to take notes, it was necessary for the appellant to procure the shorthand notes taken by the official shorthand writer in that Court. In order to procure them in this case, he had been obliged to pay a sum of £19. In addition to this there was another hardship on the appellant, namely, that though application had been made for the notes very shortly after the trial had taken place, they were not supplied till several weeks after the time for appealing had elapsed. The result of this was that the notice of appeal had to be drawn up from Counsel's recollection of what took place.

MR. JUSTICE DARLING said he was obliged to Mr. M—— for having called attention to these facts. The rule was this, that in the City of London Court it was the statutory duty of the Judge, if asked to do so, to take a note. The Judge in the City of London Court, it appeared, had not been in the habit of taking notes. This being a grievance, it was represented to the Court of Appeal that the Corporation of the City of London had provided a shorthand-writer to take full notes of the proceedings. It was understood that this was done free, but it now appeared that serious expense was thrown upon appellants, as a large sum had to be paid for a copy of the shorthand notes.

In the case of poor people who cannot afford the expense, a system such as this would amount to downright injustice. The

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Court of Appeal had a discretion as to the use of these notes, and only allowed them instead of the Judge's notes because they believed they were free, or provided at some insignificant cost. It would now be open to any Court to whom an appeal might be brought, to decline to receive these shorthand notes as evidence. He, for his part in future, if he found that expense was being cast upon the party appealing, would insist upon being provided with a note by the Judge. Mr. Justice Channell expressed his concurrence with these observations.

The *City Press*, in an article republished these remarks in its next available issue (May 24, 1899), and said :—

The above reported remarks on the part of the Counsel for the appellant, and of the Judge, are likely to be misunderstood, unless a full explanation of the position of affairs is stated. As the readers of the *City Press* are aware, for several years past, owing to Commissioner Kerr's reluctance to take notes of the case heard before him, an official shorthand-writer, in the service of the Corporation, has been in daily attendance at the City of London Court for the purpose of taking an official note of the proceedings. This arrangement has been found to work in every respect admirably, and we understand that owing to the facilities it offers to suitors and the economy of time that results, several other Courts have adopted the same system. The Judges of the High Court too have, on several occasions, expressed themselves in favourable terms regarding the new departure, and the criticism of Mr. Justice Darling is, in as far as we are aware, the only adverse comment that has been made as yet upon the arrangement in force. The facts of the case, we are enabled to state on inquiry, are as follows. In cases where the appellants are poor, and consequently not in a position to pay for the transcripts they require, the Corporation, through Mr. Commissioner Kerr, has supplied the reports entirely gratuitously. In other cases also a reduction has been made in the customary charge, and in no case, it may be added, has the customary fee of one guinea for taking the note been levied. In the case referred to in the High Court, the appellants were a Limited Liability Company, paying a handsome dividend. Consequently, on the score

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of poverty, their claim to be supplied with a transcript free could not be entertained for a moment. The case was a lengthy one, lasting four days, and the actual sum paid, we learn on inquiry, was £16 14s. and not, as stated in Court, £19. For this sum every word uttered, including the very exhaustive judgment, which certainly would not have been included had the Judge's notes been supplied, was given in the transcript. If the transcript had not been supplied, and the Judge had been compelled to take notes of the case as it proceeded, the hearing would undoubtedly have been prolonged to the extent of several days at least. Consequently, though the appellants were called upon to pay £16, they not only saved a considerable sum in costs, but were not detained at the Court so long as would otherwise have been the case. The foregoing facts will show therefore that the version given in the High Courts was at best only an *ex parte* one, and that far from the system in force proving disadvantageous to the suitors, it was actually a decided advantage to them. We may add, in reference to the system generally, that the Corporation pays the official shorthand-writer a fixed salary, and that the fees received are paid into the coffers of the Court.

The Commissioner himself, on taking his seat upon the Bench a few days later, made some observations in the terms as below reported in the *City Press* of May 31, 1899.

MR. COMMISSIONER KERR AND HIS NOTES. THE COMMISSIONER EXPLAINS.

Upon taking his seat in the City of London Court yesterday, Mr. Commissioner Kerr said: "My attention has been called to certain statements made by a member of the Bar to a Divisional Court of Queen's Bench on the hearing of a case of *Harder v. Baker*, and to certain observations made thereon by Mr. Justice Darling. As a rule I, in common with all the Judges of England, take no notice of the reports or comments of the Press on proceedings in Court, but when I find statements made which are without foundation in fact, and observations founded thereon by one of Her Majesty's Judges, reflecting upon this Court, I think I am not only entitled, but

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bound, to take notice of it, not as regards myself, but in the interest of the suitors here. Mr. M——, the counsel to whom I refer, is said to have called the attention of the Divisional Court to the fact that as the Judge of the City of London Court refused to take notes it was necessary for an appellant to procure the shorthand notes taken by the official shorthand-writer, and to pay for the same what, in the case alluded to, amounted to a very considerable sum. That is not so. Firstly, I have never refused to take a note when requested so to do; and, secondly, it is not necessary for any appellant, where there are no notes, to procure the shorthand-writer's notes, as it is open to him, in the absence of notes, to show by affidavit what happened at the trial. The procedure in this Court in these matters of appeal is fully explained in a case before Mr. Justice Cave and Mr. Justice Wright, reported in the *Law Times Reports* of June 23, 1894. In that case, the late Mr. Justice Cave stated (I quote his words), that the practice of this Court appeared to him to be the very best possible course that could be adopted. On the assumption that the statements made by the learned Counsel were correct as to facts, Mr. Justice Darling made the observations to which I have referred. There is no doubt that it is the statutory duty of the Judge, here and in the County Court, when requested so to do, to take a note of a point of law, of the evidence relating thereto, and of his decision thereon; but that is all that the Judge is bound to do, and that is what I have invariably done. The learned Judge of the Divisional Court is reported to have stated that my not taking a note was a grievance, and that in consequence thereof the Corporation of London had provided a shorthand-writer. I do not know where the learned Judge obtained his information. I do know that the Corporation appointed a shorthand-writer in order to expedite the administration of justice in this Court, and the Common Council was, I believe, to a certain extent induced to do so by the consideration that a poor suitor could then obtain a note of his case on appeal without cost to him. The Registrar of this Court has invariably given a note gratuitously to any suitor who was not in a position to pay for it. I will not presume to say one word about what Mr. Justice Darling says a Court of Appeal will do in the future, but I cannot avoid expressing my regret that the Divisional Court should have been misled as to the facts, and also that it should have assumed the accuracy of these facts in the forgetfulness, momentarily let us hope, of the

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maxim, *Audi alteram parte*. As to the merits of the case of Harder v. Baker, and the alleged hardships on the litigants, I will make further inquiry of the learned Deputy-Judge who heard it, and, if I have anything further to say thereon, I will do so hereafter. Having just returned from Scotland, I have not had time to do so.

Between his appointment in 1859 and the opening of the new court in 1888 the Commissioner had indeed effected much. In 1859 he had become the Judge of a Court whose business and reputation were alike declining. In 1888 he saw it installed in a new building, with enormously increased business and jurisdiction. The increased business had been largely obtained, as was admitted on all hands, by the energy which he had himself brought to bear on the cases, mingling justice with common sense in its administration. The new and enlarged jurisdiction enjoyed by his Court was due to his ever watchful observance of the old maxim of law, that it is the part of a good Judge to enlarge his jurisdiction, expressed in the legal maxim, *Est boni Judicis ampliare jurisdictionem*. Acting in the broad spirit of the principle involved in the old maxim, when he saw a Bill entrusting Equity jurisdiction to the County Courts passing through Parliament, without the jurisdiction being bestowed on the Court over which he presided, he lost no time, and showed great energy, by at once seeking an interview with the Lord Chancellor, and obtaining for his Court the jurisdiction which was being bestowed upon others whose jurisdiction and practice was similar. His reward had, at first, been that it was said that his energy had led him into committing a breach of privilege as against the Common Council. He moreover

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only tardily, and after a long fight for it, even obtained the same pecuniary remuneration for services which he should render in administering the Act, as was given to others who had been hardly as zealous as he had in obtaining the powers the new Act conferred. When again in 1868, jurisdiction in Admiralty cases was conferred upon certain selected County Courts, he, in the first instance, desired that his Court should be one of those entrusted with it. But when he found that it was proposed that the entire fees obtained under the Admiralty Act were to be taken by the Corporation, while his own services rendered to carry it into effect were to remain unremunerated, he naturally was not desirous of being burdened with the duty of administering it. Finally when, in 1867, the power to "remit" actions to another Court, from which so substantial a portion of the funds of the City of London Court are now derived, came to be conferred upon those Courts, he by adroitly raising the question in a form favourable to that end, got his Court to be declared among the number of those to which "remitted actions" could be sent, although, by the form in which this was done, and the Court so largely benefited, he drew some sneers and obloquy upon himself.

Turning from the broad principles drawn attention to above to actual statistics, we find the state of business which was from time to time done by the Court represented by the figures given in Appendix A. The subject of the development of the City of London Court during the Commissioner's Judgeship is of such importance as to deserve a whole chapter to itself, which will be found later on.¹

¹ *Post*, Chap. VII., on p. 242.

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Briefly stated, the income of the Court, which had been on an average about only £4,000 a year in 1859, had forty years later, in 1899, become on average about £20,000 a year. The number of persons employed in the offices of the Court from being fourteen in 1859 had in 1899 become forty. The *City Press* in the issue of May 6, 1899, from which these figures are taken, said that, "beyond all question, the growth is due mainly to the Commissioner's legal acumen and sound common sense, combined with the singular expedition with which he manages to dispose, day by day, of the Cause List."

CHAPTER VI.

THE JUDGE OF THE CITY COURT DISPLAYS CHARACTERISTIC METHODS, FRUSTRATES FRAUDS, AND SPEAKS WISE AND WITTY WORDS.

A DESCRIPTION of Commissioner Kerr at work in his Court was once furnished by himself in a very few words. On an occasion when, under circumstances which will be mentioned later on,¹ he invited the present writer to sit a few times as his deputy, he remarked, in his quaint and tersely descriptive way, "You must come and see the regular dustman at work to know how the rubbish is cleared up."

In accordance with this invitation, the writer sat on the Bench upon various days by the Commissioner's side, and thus had an admirable opportunity for obtaining material to write the present chapter. He watched very closely, since he was there to do this, in order to himself learn the business!

Strict and exact punctuality was always observed by the Commissioner. Even to arrive punctually, and to defer going into Court till letters about the Court's business had been read, and papers and other

¹ *Post*, Chapter on Private Life.

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matters connected with it considered and attended to, was not tolerated by the Commissioner. He *sat*, he said, at half-past ten o'clock. Practically, this necessitated his arriving twenty minutes or half an hour before the Court sat, since there are often matters arising in connection with County Courts which it is imperatively necessary to attend to before the day's work begins, in order to enable clerks, bailiff, and other officers to proceed with their duties at once. But precisely as the hand of the Court clock pointed to that hour, on to the Bench walked the Commissioner. Cases not promptly answered by the parties were, if the defaulter were a plaintiff, at once struck out, while, if a defendant failed to appear, the plaintiff was permitted to prove his case in the shortest possible style, such as, "Does the defendant owe you £10?" followed, it might be, perhaps, by the question, "What's it for?" but more likely not so inquired into even, and almost invariably followed by a verdict for the plaintiff, full amount. To all defaulters in appearing the Commissioner had an answer, when they came later in the day to excuse their non-attendance at an earlier hour. An applicant asked one morning that his case might be reheard as it was called on whilst he was standing just outside the door of the Court. The Commissioner: "Well, you might just as well have been in the Hebrides." Another applicant said that his case was called on whilst he was standing in the road in front of the Court. Answered the Commissioner: "Ah, well, you should have told me and I might have come down and tried the case in the street." A favourite reply of his to Counsel, under such circum-

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stances, was, in good, broad Ayrshire Scotch, uttered with a strong accent, "*De non apparentibus, et de non existentibus eadem est lex.* Mr. —: Can't say more." To poor and ignorant applicants he would remark, "Ye're too late—ye'er case is over." When, however, there was really reason to suspect that the non-attendance of a party was probably not his fault, as there was a serious fog, or it was known that there had been a breakdown of a railway train, the Commissioner would be most lenient and patient, remembering possibly the one solitary occasion on which he was himself late, owing to the horse attached to his vehicle slipping down in a severe frost. On an occasion such as this he would direct a general wait, and he himself would retire to his room, till it had become evident that the business might reasonably be proceeded with.

The City of London Court, though, as we have seen,¹ it is not technically a County Court, is, for all practical purposes, the County Court for the City of London. An admirable description of every County Court in a metropolis, or other large town, and of this particular Court itself, is conveyed by an amusing article, which appeared some eleven years ago in the *National Observer*.²

The great bulk of County Court cases are humdrum and dull. The idea sought to be sometimes conveyed by the newspapers to the effect that certain County Courts are very amusing places, where much entertainment is to be obtained, is too highly-coloured. Truth to say, a good deal that is

¹ *Ante*, p. 76 *et seq.*

² Quoted *post* in present Chapter.

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sometimes reported as having taken place in a certain County Court has never really happened at all! No greater misfortune, perhaps, can befall a County Court Judge than that one of those highly imaginative writers for the Press whose incomes are made by composing over-coloured reports for the evening papers, should fasten upon his particular Court as the field for his labours. That unfortunate Judge will only slowly grow to learn what a wit he is, and what scenes of amusement his generally dreary Court often is said to furnish! Possibly, indeed, after a time he even feels it due to himself, and to his reputation for good sense, to delicately but pleasantly and kindly suggest to his press admirer that the latter would do well to enlarge the area of his County Court experience, and annex his services and witticisms to some brother Judge whose name, Court, and habitual wit and humour the grateful Judge, to whom these qualities have been hitherto accredited, may sometimes be even induced to betray to the man of letters.

The cases in County Courts which afforded our fathers and grandfathers amusement sixty years ago seem to have usually borne a strong resemblance to the same sort of cases as now, especially in the dull season, fill the spare columns of the cheap evening newspapers. The following are a few samples of some cases which came before the learned Commissioner at about the time named, and when he was first the Judge of the City of London Court.

Much spiritual stagnation existed throughout the country on the part of the Church of England till

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it was put an end to by a Church revival which commenced in the sixties. Amongst other evils of the apathetic indifference which prevailed generally, it brought into existence a large market to which lazy or incompetent clerics could resort to supply themselves with ready-made sermons. Indeed, so notorious was this, that the writer having about the period in question been expostulated with by a neighbouring farmer for committing the then, in the country, unpardonable offence of going to a neighbouring church instead of his own; and having excused himself on the ground that the rector there, then fresh from Oxford, and a great friend of the late Canon Liddon, "preached the best sermon round," received the crushing retort, "More shame to 'un if he didn't; for I hear with that rich living he pays up half a crown more each for his sermons than any of t'other parsons in these parts." The two following reports would seem to show that the cynical farmer, though certainly wrong in this particular instance, was not badly informed on the whole, as to what was a usual custom with clergymen in those days. For, in May, 1861, an action was tried in the (then) Sheriff's Court before the Commissioner, a report of which was as follows:—

HOW SERMONS ARE MANUFACTURED.

In the Sheriff's Court on Tuesday a somewhat singular case was tried. It was that of *Rogers v. Havergal*, and the action was brought to recover £2 10s. for twenty sermons sold and delivered. The plaintiff is a retired clergyman, and the defendant is the Vicar of Cople, Beds. It appeared, from the statement of Mr. Marchmont, agent to the plaintiff, that defendant ordered, upon April 27, 1859,

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a sermon upon the Thanksgiving for the termination of the Indian War, price 2s. 6d. This was sent, and subsequently defendant sent for copies of sermons, and twenty were sent upon general subjects. Subsequently defendant wrote for a special sermon upon the re-opening of his church, and for this he paid £1. A number of letters from defendant were read by Mr. J. Hudson, C.C., who appeared for plaintiff, in which curious questions were asked about "stock sermons" and the like. Mr. Hudson, in answer to inquiries from His Honour, said sermons fetched all prices—some as high as £5 5s. A Bishop's charge or an Archdeacon's address would fetch the latter price. He could produce a man who had written Bishops' charges. His Honour asked what a sermon before the Lord Mayor would cost. Mr. Hudson said from £3 3s. to £5 5s. His Honour remarked, amid much laughter, "There is no knowing where our Spital sermons come from." Ultimately a verdict was found for plaintiff for the full amount.

A similar case was tried in July, 1864, and reported as under :—

THE LONDON SERMON MARKET.

In the Sheriff's Court on Saturday, before Mr. Commissioner Kerr, Mr. Rogers summoned a number of country rectors, vicars, and curates for monies due to him on account of sermons furnished by order to the defendants. The case of *Rogers v. Walcot*, Rector of Ribbesford, is reported.

His debt amounted to £42 14s. 6d. The amount included harvest sermons at 2s. 6d. each, others at 5s. each, and one for a special occasion at a guinea. In all the reverend gentleman had had 326 sermons. The defendant admitted the receipt of the sermons, and that they were good ones. The verdict in this, and in the other cases, was for the plaintiff.

Every one has heard of "a bull in a china shop." But it will be news to many to learn that, in strict law, every animal, not known to be of a fierce and mischievous nature, is entitled to have one pleasant day's sport in such a place without making his owner liable to pay for the damage he does! The High

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Court some years later so decided in the case of a bull in an ironmonger's shop in the same way as the Commissioner had decided in the case of the cock in the china shop—and the china dealer would obviously have no better legal claim than an ironmonger. This is an instance of the soundness of the Commissioner's law. For he had, years previously (namely, in 1861), arrived at precisely the same conclusion as that at which the High Court subsequently arrived, for in 1861 we find the following amusing case arose in his Court.

MARSHALL *v.* DELLAMORE.

In this case the plaintiff is a china shop keeper, and defendant a livery stable keeper. This action was brought to recover £2 8s. 1d. damage sustained through the misconduct of the defendant's game cock.

Defendant pleaded that this cock did not belong to him, and that he was not liable.

Plaintiff stated that he carried on business in the Crescent, and defendant in Vine Street, Minories. Upon a certain day, a game cock belonging to the defendant walked into the shop, and knocked some articles off a shelf, causing great breakage in the plates and dishes on the counter.

Mrs. DELLAMORE: The cock does not belong to us.

His Honour (to plaintiff): Can you show that the cock has a habit of breaking crockery? (Laughter.)

Plaintiff: I did not ask it.

His Honour: The law has been clearly laid down that it must be shown the animal causing injury was vicious to the knowledge of the owner. Some persons object to this law, and I confess I am not satisfied with it. It had been decided, where a dog bit a man, that the owner was not liable, as the dog was not shown to have bitten anybody before within the owner's knowledge.

Plaintiff: If that is the law, I think it is high time the law is altered. (Laughter.)

His Honour: I am very sorry, and it appears to be a hard law,

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but I must nonsuit you. But if ever that cock comes into your shop again——

Plaintiff (very emphatically): I will take care that he never goes out again. (Great laughter, during which the parties retire.)

The last case which will be recorded here is a strange one even for a County Court, and would excite some considerable attention in the evening papers even in these days:—

ADVERTISING FOR A WIFE AND SELLING THE LADY FOR £27.

Bye v. Kowatski.

The plaintiff in this case sought to recover £5 upon a certain I.O.U., alleged to have been signed by defendant on behalf of a third person.

Mr. Buchanan, for defendant: If Your Honour will permit me I can simplify matters very much, by stating that no consideration ever passed for the I.O.U. The defendant is the head cook at the Castle Tavern in Gresham Street, and he was acquainted with a Mr. Camera. Now Mr. Camera advertised for a wife (laughter), and a certain young lady answered this advertisement (renewed laughter). Mr. Camera, however, was not quite satisfied. Either the lady was not pretty enough, or had not money enough (laughter), but for some reason or the other, he said to defendant, "You want a wife, it is a pity the lady should be disappointed (laughter), you shall have her for £27" (shouts of laughter). Defendant, thinking a good wife cheap at £27, gave a bill for the amount. (Here the gravity of the Judge quite gave way, and he could not but join in the bursts of laughter which greeted the speech of the learned gentleman.) The lady, however, turned up her nose at defendant. "What!" said she, "marry a cook, a common cook? No, indeed, I have not come to that yet" (great laughter). Mr. Camera then said to the defendant, "Well, the sale is off, and you may have your bill back, but she may be sued, for women are changeable, so you shall have her for £5. Give me your I.O.U. for £5, and if you should marry the lady, pay me." As the lady was still obdurate, he (Mr. Buchanan) contended that no consideration had passed.

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Miss Bye, the plaintiff, said she had been barmaid to Camera, who owed her £15 wages, and gave her the I.O.U. as part payment.

Mr. Camera said that the defence set up as a preliminary step by Mr. Buchanan was not altogether correct. Witness had kept defendant for six months and had lent him money.

Cross-examined: I did not advertise for a wife, a friend of mine did. I thought that the defendant was hard up for a wife (laughter), and I told him he could have the lady.

His Honour: Why don't you pay plaintiff her £15?

Witness: I have been bankrupt.

His Honour: Did you advertise for a wife before or after your bankruptcy? (Roars of laughter.)

Witness: Before.

Mr. Buchanan then called defendant, who denied that Camera had kept him or lent him money. Camera wrote out the I.O.U. himself. The facts were as stated by Mr. Buchanan, and the only thing giving rise to the £27 bill and the £5 I.O.U. was the lady who was sold to the defendant (laughter).

His Honour considered that defendant had made out his case, but it was rather hard upon Miss Bye. Miss Bye had her remedy against Camera, but now there must be a verdict for defendant with costs.

The Commissioner's method of trying cases was peculiarly and emphatically his own, and so may probably be best described in his own words. Said he, "I wait till I can catch the point, and then I *pounce*." For example, on one occasion the following incident happened. A certain Act of Parliament, doubtless on good grounds, renders a printer unable to recover his bill for printing any matter to which he has not affixed his name and address. A member of the Common Council brought an action against a defendant who, by putting forward certain very plausible reasons, had induced the worthy Common Councillor to omit his name and address

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from some literary matter he had printed. The defendant, according to the plaintiff's statement, had undoubtedly behaved, morally speaking, about as badly and shabbily as one man can act towards another. But as soon as the learned Commissioner had heard the fact that the matter, the printing of which was sought to be recovered for, had been printed without the name and address, he promptly "pounced" and made an end of the case. "Can't repeal the statute for ye," he cut in; and after a few more similar remarks from him, the case was ended. He with readiness in every way facilitated an appeal, and tried to assist the plaintiff, whom he thought to have been cheated. But the whole *verbatim* shorthand note of the trial filled scarcely more than half a page of foolscap, and the Commissioner's judgment, expressed in the few words quoted above, was at once affirmed by a Divisional Court on the hearing of the appeal.

A case of a similar nature was the following. A lady required a carriage horse. Her ne'er-do-well son purchased one of "a friend" and sent it home. The coachman took exception to the animal, possibly because "the young master," who was not living at home, had received so handsome a "commission," from his rather "fast pal" who owned the horse, that the coachman had been on this ground refused by the seller his usual "guinea for luck." At least such was the suggestion of a wordy young Counsel who opened the case at inordinate length, and announced his intention of calling most of the Professors from the Veterinary College, as well as several other eminent London

Methods in Court

"vets," with voluminous hints as to how he should cross-examine that coachman, and that this "important case" would last at least three days! The wily advocate for the defendant interposed with a few words, suggesting that the real point was whether the son had any authority to buy, and intimated that he would give up every other question. "Now, then, prove the son's agency," ejaculated the Judge. The rhetorical young Counsel resisted, but "the Court" was obdurate. The plaintiff's counsel then tried to prove the authority of the son to buy the horse for the mother, but so failed that in desperation he called the ne'er-do-well son himself. The latter had to admit that he had no sort of authority, and sent the horse home of his own head, induced by the fact that, as he put it, he could "do a friend a good turn, and also make a nice bit for himself." The young Counsel retired after his case had occupied about three-quarters of an hour, two-thirds of which had been occupied by his own eloquence, in place of the "three days" he had foretold; the professors were set free to attend to their professional duties at the Veterinary College; while the Judge dryly said, as was his wont, "Next case!"

Such being his own methods, it need hardly be said that the Commissioner exceedingly disliked long speeches in flowery and ornate language, and a party or an advocate who would not "come to the point, man," as he expressed it. How often have the reader and the writer alike both wished at times, when compelled to sit still in silence and hear a wordy preacher

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“talking round” his subject—wished that the laws against brawling would permit them to “cut in” and brusquely but politely say, like Commissioner Kerr, “Come to the point, man.”

Sometimes indeed the Commissioner would sarcastically remind Counsel that the jury only got 1s. for listening to four speeches, and that this was hard upon them, as it was only 3d. a speech. On one occasion the jury¹ complained that learned Counsel was telling them the same thing two or three times over. The Commissioner drily remarked, “Ah, well, there is a tradition amongst the Junior Bar that a fact can be only got into the head of one jurymen at a time.” Turning to the Counsel he said, “You’ve said it three times; now say it three times more, and that will be once for each of the jury and once for me.”

Upon the subjects of the rights of advocates to cross-examine witnesses, the right of the public to protection against improper cross-examination, the question whether the division of the responsibility between the counsel and the solicitor for needlessly offensive cross-examination, and the kindred and much-debated matter as to whether the two branches of the legal profession ought not to be amalgamated, the Commissioner clearly expressed his views in the following letter, published in the *Pall Mall Gazette*, of January 7, 1892. This is as follows:—

“SIR,—In answer to your inquiries as to cross-examination, I have to say that I do not consider the present system open to the objection that witnesses and persons unconnected with the suit are

¹ It will be remembered that a County Court jury consists of five.

Views about Cross-examination

insufficiently protected. The judge has full power to stop examination which he considers is irrelevant to the inquiry before him. The difficulty is to see clearly what may prove relevant. The character of the witnesses is an important element in considering whether their statements are to be believed or not, and this can only be ascertained by cross-examination. It is undoubtedly the duty of the judge to stop cross-examination which he sees is pursued for any other purpose than to get at the truth of the matter in dispute, and he may by judicious observations make the counsel who unduly persists feel that he is prejudicing his case with the jury.

"2. I do not think that the distribution of responsibility between counsel and solicitors affects the matter. Neither the barrister nor the solicitor can try beforehand the truth of the statements made to them, which become the subject of cross-examination. The propriety of putting offensive questions must be judged of by the circumstances of the particular case. It is a very serious responsibility which is exercised by some counsel with conspicuous good taste and good feeling, and such men have their reward in the confidence with which they inspire judge and jury. Others, unhappily, use their power in a cruel manner. I do not think they are so successful as their more conscientious rivals; but, unfortunately, they are popular, as they gratify a base feeling which makes some people enjoy seeing a witness worried. In a sentence, our system is not in fault; it depends on the good feelings of counsel and the firmness of the judges to make it work well.

"3. I am strongly in favour of the amalgamation of the two branches in this sense, that there should be a special examination to qualify for admission to each, and that it should be open to a man who has proved his fitness to practise either as a barrister or solicitor, or as both, to do so."

It will be seen that while the letter clearly reflects what one might expect to be the feeling of a strong judge who was always noted in his own court for seeing fair play, it no less clearly points out the abuses which are notorious, and which do not always receive the censure they deserve. At the same time it favours all important reform. Mr. Commissioner Kerr distinctly pronounces that the present system is open to the objection that witnesses and persons unconnected with the suit are insufficiently protected. With all that

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has been said about the "weakness" of many judges and the "bullying" of some counsel he agrees. He even thinks that the line taken by the *Times*, "though it goes very far, does not go far enough." But he does not attribute the fault specially to the distribution of responsibility between counsel and solicitor. He rather blames the inadequacy of the professional tribunals—the Incorporated Law Society and the Benchers of Lincoln's Inn. "Q.C.'s are Benchers," writes the learned Commissioner, "and Benchers are not likely to look after Q.C.'s." And he makes a practical suggestion. "We want a 'conseil de discipline.'" As regards the proposed amalgamation of the two branches, he points out what is undoubtedly a consideration limiting the effectualness of that reform for the purpose now in view; the fact that even in a firm of solicitor-barristers on the American and colonial lines, "there will and must always be an advocate for court, and an adviser for chambers."

The force of this objection, it seems to us, may easily be exaggerated. The responsibility would not be absolutely concentrated, but it would at least be less divided than under the present system. The pressing question is: Does this division increase the mischief complained of?

On one occasion a Barrister, who was a terribly verbose practitioner, discovered that one of the jury trying the case was fast asleep. He forthwith roundly rated those who were still awake for taking so little interest in the case. Interposed the Commissioner, "Ye just remind me of a meenester in Ayrshire, who was lecturing his congregation for not coming to kirk, and remarked, 'Those of ye who do come are asleep, bar the village idiot,' when a voice said, 'If I'd nae been an ideot I had been asleep too.'"¹

While generally jocular at the expense of others,

¹ This story about the preacher and the village idiot is also a favourite one with the wise and witty Lord Young, a Scotch Judge, and Bencher of the Middle Temple, who was a venerable friend of the late Commissioner's.

Anecdotes and Sayings

the Commissioner could appreciate and enjoy a good repartee even at his own expense. Thus on one occasion an advocate with a beard and moustache (which he then hated), appeared before him. "How can I hear you, sir, if you cover up your muzzle like a terrier dog," he asked? "Well, I had rather be an English terrier than a Scotch cur," was the reply. The Commissioner chuckled, and merely remarked, "Get on." Similarly, he greatly enjoyed the joke when Mr. Justice Hawkins (now Lord Brampton), on learning that the Commissioner was to be made a Serjeant and then a Judge, said that this was impossible, as no Judge would ever like to call him "Brother Kerr." Nor did he take it amiss when, in answer to some remarks from him as to the small fees taken at the Scotch Bar, a favourite of his retorted, "Doubtless that is why so many Scotch Barristers come to England."

To a party in person, who persisted in irrelevant "talk" about his case, the Commissioner has been known to remark, "Don't talk, sir; hold your tongue. Get into Parliament, or the County Council, or some other talking-shop, if you want to talk, but you must not do it here!" To young Counsel, needlessly indulging in irrelevant "oratory," addressed to the "gallery," he would remark pun-gently, "Every young man at the Bar nowadays thinks he's a Demosthenes!"

While lengthy and oratorical addresses annoyed him, he also much resented the multiplicity of speeches allowed by modern legislation. In a review of one of his annotated editions of the Common Law Pro-

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cedure Act, 1854, he had betrayed this dislike by the remark (erroneously) that he considered that the right to sum up given by the Act did not extend to cases tried without a jury. The *Jurist* had at once taken him to task for expressing this view, and questioned its correctness.¹ There is, however, no doubt at all—for the Court of Appeal has expressly so decided—that there is no right to “sum up,” or make a concluding speech, on the part of the Counsel for the defendant in a County Court case. The Commissioner always strictly enforced this rule. Moreover, it is the practice with some Counsel not to face their difficulties boldly, and when they have no case for the defendant to say so. These often ask to postpone their speech till the conclusion of their evidence. They proceed to call their client, who usually, as there are no pleadings in the County Court to confine the trial to specific questions (or issues), proceeds to tell a rambling and discursive tale, after which his Counsel addresses the Judge in an equally discursive speech, dealing with everything in general and nothing in particular whatever. An attempt to adopt this course always irritated the Commissioner much, and as it sometimes did injustice to the client by making him believe there was “no case” for the defendant on whose behalf it was sought to follow it had no real case, it was bad advocacy to ask him to permit it. The best way to gain his favourable opinion used to be to open a case in as few words as possible, especially if they were direct and “to the point.”

To lay down to him as “law” that which is, in

¹ See *ante*, p. 59.

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truth, "bad law," or, in other words, that which is not law at all, has always an irritating effect upon a real lawyer; and, as a rule, the better lawyer a Judge is, the more will be his irritation and annoyance at "bad law" being addressed to him, as if he were unacquainted with the real article. The Commissioner was himself an excellent lawyer. To a young barrister laying down "bad law" to him, and persisting in his argument, notwithstanding his obvious dissent, the Commissioner would impatiently say: "I am not here to lecture on law, otherwise I should be here all day and night, teaching the profession their business." He once, indeed, made an enemy for years of a solicitor, who was trying to make him accept law which the speaker insisted was correct, although the Commissioner had intimated that it was not, by impatiently exclaiming, "Pshaw! Go and buy a shilling Guide to the Law!"

While "law" rests on principles, and the Commissioner was accordingly impatient of those who showed themselves ignorant of legal principles, he was equally impatient of practitioners who had failed, as he thought, to make themselves familiar with the "practice" existing at the moment, by taking the trouble (which is all that is needed) to "look it up." "The practice"—indeed does not rest much upon principle, and mostly varies from time to time, to meet what is, at the moment, judged to be convenient—but can always be easily ascertained with little trouble, and moreover usually with just the same amount of scientific knowledge about the subject in hand as is generally needed

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to enable one to intelligently turn up the day of the month or the age of the moon in an almanack. To a practitioner who had neglected to "post himself up" in the prevailing practice he would say with irritation: "Very few solicitors know their business in the present day. They do not trouble even to read the Rules and Orders which govern the Court's procedure. They act according to what they call 'the instinct of the heart.'"

Great, too, was his dislike of "counter-claims," which he used to often describe as "the modern substitute for the sham pleas of my younger days." A "sham plea" was one which used to delay the proceedings and gain time without the risk of adding to the costs. To a claim for a just debt a defendant would answer, not denying it, but alleging that he and the plaintiff had agreed that he should deliver to the latter, in satisfaction of his claim, a brown bear, or a black mare, or some other fancy article. Of course, this statement was all nonsense, but it gained time, and the plaintiff could not incur any expense in the meanwhile in preparing for trial, as his debt was admitted, and the burthen lay with the defendant to prove the plea, not with the plaintiff to disprove it.

Many a useful hint for the conduct of cases could be picked up by an advocate apt and ready at learning from the astute and experienced Commissioner. One of his favourite pieces of advice used to be somewhat as follows :—

"I will give you a hint which will be of service to you for the rest of your professional life as a solicitor. Always let evidence

Anecdotes and Sayings

of prejudice go in without objection, because it does more harm to the man who imports it than to the person whom he tries to damage by the prejudice."

A hint of a somewhat similar nature was given to the present writer years ago by Lord Brampton—under the name of Hawkins—one of the most able cross-examiners and defenders of prisoners, against too readily taking objection to a question put by the other side. "Take care how you object," said he. Then he told how, when still a young man at sessions, with a serious case to defend, yet having no defence, he once, on a purely technical ground, while ever on the look-out for a "break down," forced a magistrates' clerk to be put into the witness-box by the prosecution, to prove a purely formal matter; how, having got him there, he cross-examined him, and made him practically admit that he "led his magistrates by the nose"; to also admit that they had refused bail by his advice, and that a Judge at chambers had afterwards granted it, although the witness had come up all the way to London from the country to oppose it. Then, asked the bold cross-examiner, "You were in the room, sir, and didn't you hear the learned Judge say there was not a rag of a case against my unhappy client?" The prosecuting Counsel objected to this question, and the collective wisdom of Quarter Sessions ruled it could not be put. But the Jury had heard it, and they had heard the answer stopped. The dissatisfaction this induced in their minds made them acquit the prisoner. Leaving the Court that day, the prisoner's Counsel asked his opponent, "Why did you object to that question?" The latter indignantly

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protested that his adversary, when he asked it, must have known that it could not be put. "Yes, I did," was the answer; "but I knew you, too, and felt sure you would object at the right time. But you should have waited for the answer, as it would have been 'No'!!!"

In a recent number of *T.P.'s Weekly* (January 2, 1903), it is said of the learned Commissioner, with great truth, that he was "Fatal to moneylenders, tally-men, and all oppressors generally; he protected the interests of the poor and the harassed suitor." His methods with moneylenders may be partly gathered from an earlier page.¹ The paper just quoted asserts that, when he gave a judgment that a moneylender should receive payment, but only by small instalments, he has often been known to add that "Shylock might get paid during the present century, but he" (the Commissioner) "doubted it." Some remark to this effect certainly did once fall from the learned Commissioner. He on one occasion ordered payment by instalments of a penny a month, which it would take 385 years to complete. He moreover also sometimes refused "costs" to the Solicitor for an extortionate "cent.-per-cent." moneylender, as the same paper suggests, and the refusal would probably be accompanied by the remark, "Your client's had too much already."

Strong as was his dislike for professional moneylenders generally, the class of the fraternity who were the objects of his particular aversion were the pests who make a practice of pressing loans upon clerks

¹ See *ante*, pp. 121 *et seq.*

Dislike of Domestic Credit

in some Government office or department, where they know the clerks to be forbidden by the regulations of the office to contract loans, and who then "put the screw on" by threatening to expose the transaction to the heads of the department. The victims of this sort of treatment were generally amongst the "poor and the harassed" whom *T.P.'s Weekly* rightly says were always the objects of the Commissioner's protection. Another class with whom the Commissioner much sympathised and ever tried to help were the judgment debtors brought before him on stale judgments.

Not only "tally-men" (a name strictly proper only to travelling dealers in goods to be paid for by instalments), but all who sell goods on the instalment system of credit to people who, for the most part, either do not want them or, if they do, are made to pay extravagant prices in view of the "easy terms," were special objects also of the Commissioner's dislike. He held strong views that people ought not to buy, or to be tempted by others to indulge in, things which they really cannot afford. This often made him say, "Credit is the curse of this country!" with great emphasis. But just as a little boy once declared that he had heard the clergyman say in church, "There is no God," justifying his assertion by the simple process of leaving out the prefix, "The fool hath said in his heart;" so some people, by leaving out the context of his remarks, make the Commissioner guilty of the absurdity of wishing that the great system of *com-mercia!* credit, on which the business of this country

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is so largely built up, were abolished. He, of course, when thus speaking, referred to *domestic* credit. Thus, he used to remark: "I pay for my coals down on the nail—why should not everybody else? I would abolish credit altogether in this country if I could."

On one occasion, when the question of giving credit was being discussed, he said, "I would fine every man who gave credit 5 per cent. upon the amount incurred, and I would very soon pay off the National Debt."

Said he, on another occasion, when the question of welshing a betting man was being discussed, "I fail to see why a man should be welshed because he does not pay his betting debts. If every man in the City of London who did not pay his debts was welshed we should have the grass growing in Cheapside.

The Commissioner's pet theory against giving credit once furnished occasion for a most amusing incident. One day a plaintiff was seeking to recover £13 odd for milk supplied. The Commissioner said to a milkman: "I thought every one paid for his pennyworth of milk each day as it was delivered." Plaintiff: "Oh no, they don't, your Honour. I serve your Honour's house with milk, and they have not paid me for two months." The Commissioner: "Ah, well, you'll not supply me any more; you will be watering my milk to make up for this £13 you are going to lose."

The views about domestic credit made the Commissioner disapprove emphatically of every form of

Dislike of the "Tally System"

purchase on what is euphemistically called the "deferred credit" system, whether it were by the "tally" system or the "Hire Purchase" one. He used to say to persons who had made purchases on either of these systems, both of which are forms of "deferred payment," words of warning somewhat as follows: "Never sign a hire-purchase agreement. They are generally snares and delusions. In fact, never sign anything for the rest of your life." His view was that either the inferiority of the goods, or the excessive number of payments exacted in all cases of this class, made the purchasers unwittingly pay far more than the article acquired was really worth.

In old days, the tally system was generally applied to Bibles, watches, female finery, and such like. It has now been extended to cycles, railway tickets, sewing machines, and various other articles. The Commissioner's objection to these systems was not alone the high price and inferior quality. He thought also that, while it was very wrong of people to purchase things which they could not afford, it was equally wrong of others to try to tempt them to do this, and that if the latter lost money over such a transaction it only "served them right." The views which he held on these matters to the end of his life were the same as he had entertained early in his career. One of such cases had come before him as early as November 27, 1859, and before he had been long upon the Bench. The following dialogue then occurred:—

Commissioner Kerr

Parry v. Young.—THE TALLY SYSTEM EXTENDED.

This was an action by the Plaintiff, as Manager of an association calling itself "The Practical and Devotional Family Bible Association," for £2 2s., the balance of £2 12s. for a family Bible sold to the defendant.

The Plaintiff said that the association was formed by some three or four gentlemen for the purpose of supplying Bibles, to be paid for by weekly payments.

His Honour asked if the Tally System were applied to the Bible trade.

Plaintiff: We take weekly payments.

His Honour supposed a profit was made out of them. He thought this should not be. It seemed a very high price for a Bible. He knew that Mr. McPheen, of Glasgow, used to sell a very handsome Bible for 20s.

Plaintiff: But ours is illustrated, and contains lengthy comments.

The Defendant said that he agreed to pay 2s. a week, and had paid a deposit of 10s., but finding that the Bible was not bound in real morocco as represented, he refused to pay more than 27s. in addition to what he had already paid.

His Honour, on looking at the Bible, said he thought it was not real morocco.

Plaintiff: Indeed it is. It's goat-skin.

Two witnesses were called for the defence, one a boot-maker of forty years' standing and the other a bookbinder, who both swore that it was not real morocco. One said he sold the book from 30s. to 40s., according to the style of gilding, &c.

His Honour said the Plaintiff must be non-suited with costs, as the proper parties had not been sued. He added (to Plaintiff): You must not sell imitation for real morocco. The Association makes a profit of 12s. out of every book. The Defendant has a right of action against the Association for the 10s. he has already paid.

How justice was given to book-hawkers, and to mechanics and servant girls who have unwarily become their victims as customers for serial issues (generally inferior) of works of which they only have

Discourages Book Canvassers

seen a specimen, may be gathered from the following newspaper articles.

From the *Queen* newspaper is extracted the following :—

The account of a City instructive case, which was brought before Mr. Commissioner Kerr in the City of London Court in the preceding week, was reported in the last number of the *Queen*. A well-known firm of publishers of Shoe Lane sued a blacksmith for books which he had ordered, and refused to accept.

The order was given for certain encyclopædias. The specimen copy on the merits of which the order was obtained was admitted to be excellent, but the succeeding numbers were described by the defendant as simply "beastly." He, however, paid for those he received, but declined to take the remaining fourteen volumes. Mr. Commissioner Kerr gave a verdict for the defendant, in terms not complimentary to the morality of the system, but he refused to allow the defendant his costs, on the ground that he should not sign contracts of the kind which was produced by the plaintiffs. Of the merits of the particular case we know nothing more than afforded by the report, and that speaks for itself. A second case will be found in our present number taken from the *Times* of Monday. A "Suburban Vicar" writes to expose the practice of certain firms employing book-hawkers to inveigle young girls into signing contracts to purchase Bibles, &c., under similar conditions. The writer cites a case in which a child of sixteen had entered into a contract and, in the course of two years, had paid £1 19s. to one of these canvassers for a large Bible. On leaving her situation she was served with a County Court summons to pay 16s. more to the "firm," doubtless relying on the defendant's ignorance of the law that payment for goods not necessities of life, ordered by a minor, cannot be recovered, and trusting that the summons would frighten her into payment.

Another newspaper's comments upon the book-hawkers were as under :—

Mr. Malcolm Kerr has come back to the City of London Court, and is there again giving his decisions. Mr. Kerr has always desired

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to be what lawyers call a "strong Judge." Lawyers mean by this a Judge who is not bound by too many coils of the red tape of precedent in giving his decisions. Mr. Kerr's latest judicial pronouncement has some interest. There is a usage, when some voluminous work is being projected as a serial, to send round a traveller with a sample early number, who gets what subscribers he can. The usage is quite legitimate, but it may cover an illegality. The case which Mr. Kerr decided in a very offhand way came under this last condition. The bulk did not answer the sample, the later issue was not equal to the first number, from which the order was made. Mr. Kerr decided for the defendant, and the bookseller was left to his action for breach of contract. The importance of the decision lies in this—that, at a time when the press is literally flooding the country with serials, it must almost necessarily happen that publishers, keen for orders, may make promises greater than they can fulfil. The promise is not verbal. The first number is the promise; and, if the quality of the first number is not substantially preserved, then the subscriber can't be called upon to complete. He has paid for what he had, and he need not have the other, and need not pay for them.

The way in which the Commissioner dealt with claims upon poor seamstresses for sewing machines sold to them at exorbitant prices may be gathered from a newspaper extract taken from the *Observer* of December 13, 1885:—

Mr. Commissioner Kerr is often eccentric, or apparently so. But, beneath his eccentricity, runs a strong undercurrent of common sense and genuine kindness. He had on Friday last before him a number of summonses against poor needlewomen, who had been trying to possess themselves of sewing machines under the so-called purchase-hire system, and who had fallen into arrears. The learned Commissioner, *more suo*, denounced the system as extortionate, and told the debtors that he should only order them to pay what they could afford. Under the hire-purchase system, a poor woman gets possessed of a machine at about twice the price she would have to pay for it in cash. The vendor is protected by a well-known legal

Dislike of Hire-Purchase System

decision, to the effect that goods on hire-purchase are liable to distraint for rent, but not to *feri facias*, or execution for debt. The seller consequently has only to look after the rent receipts, which, in the case of a seamstress, are weekly, of course. When the price of the machine is nearly paid, there is pretty sure to be an arrear in an instalment, and then the machine is at once carried away, and the back instalments declared to be forfeited. The purchase-hire system is always the same in principle, and it is perhaps as well that its exact nature should be more generally known, and that young women anxious to avail themselves of its advantages, should be able to judge also of the disadvantages with which it bristles.

The book-hawkers appear to have suffered in silence—probably publishers of the class by which they are supplied with their wares have no trade journal. But there is or was a *Sewing Machine News*. This is an American periodical, and it heartily denounced the Commissioner in its issue for February, 1886. In its "London Letter" its correspondent denounced him as one who "should be held in execration and contempt by all classes representing the sewing-machine trade," and the correspondent added, "I shall be glad if you will print his name in capital letters: MR. COMMISSIONER KERR." Then followed about half a column of violent and virulent abuse, but not a suggestion that the course which the Commissioner had adopted was not perfectly legal. He had treated the American sewing-machine Shylocks in the same way as he long had the English money-lending Shylocks—by giving them indeed their "pound of flesh," but ordering it to be paid by very small instalments, and advising the poor defendant, in cases where it was worth their while so to do, as to the manner in which the debt could be altogether got rid

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of by a recourse to the protection afforded by an "Administration Order," or by the Bankruptcy Court.

About various matters in our legal system the City Cadi had views as pronounced as those which he held about certain classes of individuals who habitually came before him.

The Commissioner, wherever it was possible to do so, decided against those whose acts were likely to be prejudicial to the health of the community. Thus, before such views of the law had become as frequent as they since have, he, in May, 1883, decided that "property has its duties as well as its rights," as he then said, to quote from the *Birmingham Daily Post*. In a case of *Cook v. Elwen* the landlord had sued for his rent, and the defendant, a widow who was tenant, and let lodgings, had made a counter-claim against him for breach of a contract to put the drains in order on being paid £4 a year extra, and having neglected to do it, so that the house became uninhabitable. Defendant made a counter-claim for the rent for the period during which the house was uninhabitable, and for damages because lodgers had left and illness had ensued. The Commissioner gave judgment for the defendant on the claim and also on the counter-claim, with substantial damages, and allowed costs on the higher scale, on the ground that the point was of general public interest. In March, 1888, a somewhat similar case occurred. Two maiden ladies, who had taken a house at Bayswater to use as a boarding house, obtained damages from their landlord for not putting the drains of it in order as he had undertaken to do. This case also

Protects Health of Community

attracted great attention, and was the subject of an article in *The Standard*. Again, where a fish-salesman of Billingsgate sued for the price of a "trunk" (or box) of fish sold by him to defendant, with a few good ones on the top, covering a lot of rotten ones which were unwholesome and not fit for human food,¹ the Commissioner denounced the practices of Billingsgate in a way which afterwards exposed him to much of the characteristic language of that locality, and gave judgment for the defendant on the ground of fraud. This "got over" his own previous holding (clearly not now law, as Act of Parliament is to the contrary) that there is no implied warranty on a sale of provisions intended to be sold by retail for human food.

Company swindlers received no sympathy from the Commissioner. One day when he had a case of this description before him he remarked, "I believe that if some one started a railway to the moon people would take shares in it." To a lady who had lost a considerable sum of money in the company he said, "Take my advice, madam, and for the future never hold shares in anything but the Bank of England."

Certain classes of defences also received little encouragement from Commissioner Kerr. A defence common in County Courts is for a defendant, after he has had the benefit of the services of the plaintiff, to turn round and say that he thought he would not charge for them, but would give them "as a friend."

¹ As to his mode of regarding such cases in a Criminal Court, see *post*, p. 252.

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The Commissioner's general views on this sort of defence may be gathered from the following incident. One day a young surgeon, who had been in practice only a few months, was suing to recover some three or four guineas. The defendant told the Commissioner that it was only a trifling matter the plaintiff had attended him for, but his real answer was that he and the plaintiff were friends and neighbours, and he never expected plaintiff would make any charge. The Commissioner: "Ah! that is so, without a doubt." Then to plaintiff: "If you take my advice you'll try to work up a practice amongst your enemies—your friends will never pay you."

Little, however, as he might sympathise with them, or much as he might dislike them, persons who had the strict law on their side always, however, found themselves given all that they were by the letter of the law entitled to. Thus, moneylenders and vendors of things sold at extravagant prices which were to be paid for by instalments, always received a judgment for their legal dues. But the manner in which such a judgment should be enforced was left by the law entirely to the discretion of the Commissioner. He exercised it by directing the instalments to be as light as the debtor's circumstances warranted.

Long experience enabled the Commissioner to hit off a happy description of a whole class in a few sarcastic words. Thus the old maxim, *Caveat emptor*, was one about which he never tired of explaining and applying, whenever he thought that a suitor might well have been a little "sharper" in watching his own interests. Once the question of *Caveat emptor* cropped

“Caveat emptor”—Types of Witness

up in a case in which the defendant was appearing in person. The latter evidently failed to understand it, and the Commissioner said to him, “*Caveat emptor* means that the seller may cheat, but the buyer mustn’t.” Said he, too, once, when a suitor was lamenting how he had been “done” by a villainous-looking Whitechapel Jew of typical aspect, dark complexion, a very pronounced nose, and a pair of shining, cunning black eyes. “Can’t you see that *Caveat emptor*” (literally, “Let the purchaser beware”) is writ big all over his face?”

Amongst the Commissioner’s descriptions in a few words of witnesses of a class with whom he was familiar, the following are noteworthy. Once when a pawnbroker had given evidence, the Commissioner was evidently not impressed by his regretting he could not call his assistant to corroborate him. Said he, “I know—a dirty shirt and diamond studs. We can do without him. Go on with your case.”

Neither was the idle creature who often poses as “The British workman” any favourite of his. With all his kindly sympathy for industrious artizans, especially if really poor and distressed, he had an intense hatred of the man who “trades” on his being in humble circumstances, and who, as is often done by a certain class of suitors, puts forward as an excuse for exorbitant and extortionate charges, or for not paying his debts, the excuse that he is “only a poor working man.” He remarked, on one occasion, when a “working man” had claimed a bill with many exorbitant charges in it which the defendant objected to pay, one of which

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was for sweeping snow from the top of a house, "Once get a workman on your roof, and it requires an Act of Parliament to get him down again." On another he declared roundly, though he really was speaking with a view to the particular case before him, "Don't talk to me about the working man: I have a very strong opinion about him. I think that he is one of the greatest impostors of the day!"

The last remark brought him the following curious anonymous letter:—

December 7, 1880.

HONORABLE COMMISSIONER KERR.

SIR,—Many fools will blame you for your sensible remark of yesterday, about the "working man," but all sensible men must agree with you. Our Kerr is a "cur" to vagabonds, but the right man in the right place, we are proud of him. We are all working men, so are you. I was twenty years in one of our largest City firms before I got £200 a year, and I have been actually in harness forty-three years.

Coach painter can earn	...	...	...	£5 weekly
Women, perambulator work	...	...	...	£5 "
Saddlery, general	...	...	...	£5 "
Felt hat make	...	...	...	£7 "

&c., &c., and yet the scoundrels never pay income-tax, as I have done for years. They are like livery servants, &c., lazy and careless. They never pay income-tax, and with wages and gifts they many of them make £4 and £5 weekly. These I know as fools from thirty years' actual experience of these claims. Bah! I hate the word "working man"; in England it is done to death. They are the *greatest tyrants* English masters have in every trouble—nay, idleness, drink, holidays, insolence, strikes, extravagance, &c.

I am, sir, with apologies,

Your obedient servant,

CIVIS ET PATER FAMILIAS.

Distrusts "Working Men" Impostors

Being without address, the following is also practically anonymous :—

"THE WORKING MAN."

DEAR SIR,—I don't know you, or even the Court you preside over, but I hope my congratulations may reach you on your description of the so-called working man. There are thousands who think as you do, but dare not speak out for political motives, and I am delighted to find one in authority boldly declaims the honest truth. It is high time. As for myself, I have no direct connection with the "working man," but as an observer I can see he is an arrant humbug.

I remain, dear sir,

Yours truly,

JOHN ROBINSON.

To those who knew the Commissioner, and his genuine sympathy for the real working man, these letters, and the previous sayings of the Commissioner, need no explanation. The so-called "working man" who sues to recover some exorbitant sum in payment for a job with which he has chanced to one day be entrusted—such as sweeping the snow off the roof or from the gutter—but whose nearest approach to a day's work has been either when he, in the country, has tramped to the casual ward of an out-of-the-way country workhouse, or has, when in town, marched for a few hours with "the unemployed"—is the kind of spurious "working man" who was the object of the Commissioner's scathing remarks. Every class in life has its black sheep, and from these even the artisan class is not free. Amongst them are to be found, from time to time, individuals who seldom work much, and are decent workmen enough when sober; but who, after the unwonted exertion of per-

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forming a bit of work, drink and loaf on its proceeds for many days.

Sometimes a case resolved itself into a mere question of "oath against oath." Under such circumstances the Commissioner would strongly advise the parties to have a jury. He has, indeed, been charged to have sometimes erred by pressing this advice so strongly that it became irresistible. No doubt the proper course is for the Judge to himself decide a matter if the parties so insist. In such cases a lawyer will generally find for the defendant, on the ground pointed out below, viz., that plaintiff has failed to discharge the burthen of clearly proving his case. The Commissioner's general practice was to let this rule of law be well known, if not to actually mention it, and then allow the plaintiff to summon a jury if he so wished. His action in cases of oath against oath has been much canvassed, and the High Court has even lectured him on its being his duty to *decide* if asked to do so. But the practice he followed was usually satisfactory to the suitors in his Court. Some mercantile man, writing in *Kemp's Gazette* on December 11, 1889, and signing himself "A City Merchant," said :—

In contrast with the general County Court practice let us, for an illustration, take the City of London Court. That able and learned judge, Mr. Commissioner Kerr, desirous of guarding himself against an unjust decision in cases where there is a great conflict of direct testimony, invariably¹ adjourns it to be tried before a jury, with the result that, after the hearing of the case, both parties entertain the highest respect for the Judge, feeling that they have had a fair opportunity of placing their evidence before the Court.

¹ This was not quite accurate. See above.

Practice when "Oath against Oath"

The manner in which the parties to a County Court suit often flatly contradict each other was the subject of many a sarcasm by the Commissioner. Parodying the comment of the old Scotch minister, who, in expounding the text, "I said in my haste all men are liars," and remarked, "Indeed, David, if you'd lived in this parish you could have said it at your leisure," the Commissioner often said that David could have "said it at his leisure," certainly "if he had sat here for forty years." He was also very emphatic as to the need of putting every bargain into writing. Said he : "Always put everything into writing. Pens are cheap, ink is cheap, and paper is cheap." His opinion was that "people contradicted each other so much that by and by when you go to buy a penny loaf you will have to take a written order for it to prevent contradiction."

While fond of remitting cases where there was "oath against oath" to a jury, he, however, always impressed upon the parties that he had no idea whatever how that body would decide the case, and that he could not even guess what their decision was likely to be. A favourite saying of his ever was that "If you have a good case you're safe with the Judge ; if you have a bad one you have a chance with a jury."

There never was, indeed, any great sympathy between him and the juries before him. Sometimes, perhaps, the jury were struck with the manifest common sense and justice of the view he took. But at other times he was too quick for his jury, seeing a point long before it became evident to them. And

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he never—at any rate, very seldom—could bring his mind down to explain what to him was obvious.

At the end of a case the Commissioner usually gave the parties and Counsel an example of his precept, by delivering his “summing up” in the fewest possible words. He would say, “Gentlemen, you have heard the evidence. Which do you believe, plaintiff or defendant? Find accordingly.” Sometimes he would say, “If you believe the plaintiff, find in his favour; if you believe the defendant, find for him. If you believe neither, then Providence alone knows what your finding will be.”

It is told of a late Lord Justice, whose law was certainly better than his sense of humour, that he looked puzzled and thoughtful on being told of this form of summing-up, and then very seriously said, “But such a summing-up was surely a misdirection. He ought surely to have told the jury that if they did not know which side to believe the plaintiff had not discharged the burthen which he had taken on himself of making out his case, and so the law required them to find a verdict for the defendant.” Undoubtedly many judges would have so directed the jury, and be it added, in pious justice to the memory of the late very learned Lord Justice of Appeal, would have done so quite correctly. It was not, however, the custom of the Commissioner to talk to his juries in quite this style. So great was his love for brevity that he once delivered the shortest summing-up that ever was known. After a long wrangle between the rival advocates in a “running down” case the Commissioner’s summing-up, expressing his view of the

Judgments—Views on Costs

whole matter, was comprised in the two words, "How much?"

The "Judgment" delivered by the Commissioner, in cases where there was no jury, was usually as terse as his summing up to a jury. An idea of his style may be gathered from his judgment in what proved to be the last "Admiralty" case ever tried by him. The barges which a tug has in tow are on the river called technically her "tail." Addressing the counsel against whom he decided, who was a great favourite of his, the Commissioner gave judgment in these few words: "No, Mr. — ; it won't do. You haven't a *leg* to stand on, and you're *tail* was much too long."

Questions of "costs" in legal proceedings, which usually form the subjects of application at the end of a case, had a great interest for the Commissioner. He entertained a strong opinion that both costs and Court fees also are far too high in English Courts of Justice. He was wont to say so plainly, at the same time pointing out how much lower they were in Scotland. Probably every one who has had the misfortune to be engaged in a lawsuit, will accept the Commissioner's views as to costs in English County Courts, even without Scotch experiences. The Court fees in the County Courts are, indeed, in England much higher in "the poor man's Court" than fees in exactly similar proceedings are in Scotland. Their reduction by about 50 per cent., which the Commissioner desired, would certainly be a mere act of justice to the poor. Probably the nation is not yet prepared to, as has been suggested it ought to do, provide free justice just as it

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provides free education.¹ Our forefathers long ago doubtless also thought Justice ought to be free when they framed the famous clause in Magna Charta that it should be sold to none, a promise which is violated whenever fees are levied by our Courts. Some remarks once made by the Commissioner on this subject were copied by the *Practical Socialist* newspaper with great glee. He appears to have said :—

A great effort has been made during the elections to induce the new Parliament to establish free education, but the free administration of justice² would be far more important. It was attempted during the French Revolution, and I don't think it would be quite so revolutionary a measure in this country as the other project. I know how greatly people complain of the legal fees, which are very objectionable.

The above remarks attracted attention beyond England. The German *Leipzig Gazette* in particular noticed them with approval, saying :—

The enormous law costs in England are a perpetual source of bitter complaint, and many people had rather suffer injustice than go to law, as they are quite ruined by them. Judge Kerr, of the Court of Justice of the City of London, remarked a few days ago in relation to this, "People talk much of free education, and that is doubtless an important subject, but still more important is the free administration of justice. This was tried in France at the time of the Revolution, but fell through. In England, too, it is looked upon as a revolutionary measure, and yet it is less so than bringing in free education, and quite as important, and not less helpful."

¹ For the Commissioner's views on this subject and the kindred one of Courts of Conciliation, see further, Chap. X., *post*, at p. 287.

Views about Lawyers' Costs

Against the heavy costs charged by solicitors he was, too, never tired of exclaiming loudly. Said he often—

I cannot help costs accumulating. Lawyers must live, you know. If you were to establish the doctrine that lawyers were only to get a commission on what they recover there would be no adjournments, no refreshers—no anything. People would be made honest then. It would be a sad thing for the lawyers, but that would not matter.

Sometimes he remarked, "Never go to law under any circumstances. You had much better lose your money than go to law. As a rule, it only puts money into the pockets of the lawyers—the very worst form in which it can be spent."

His remarks of this nature as to costs, were a subject on which, in early days of the authorship of the *Common Law Procedure Acts*, he will be recollected to have expressed himself strongly. His views on this matter, of course, did not endear him to the legal profession. Some of the advanced newspapers, however, greatly applauded them. Thus *Lloyd's Weekly* for March 6, 1886, said this :—

Mr. Commissioner Kerr is doing a real public service by his constant, outspoken comments on the more glaring anomalies of the law and the legal facilities given to lawyers to overcharge their clients. In a case which came before him yesterday in the City of London Court the matter in dispute was £60, but the costs already incurred in the action amounted to £38. The Commissioner very rightly observed that it was equally discreditable to the legislature and to the legal profession that such a system could be allowed. Some exception was taken to this sweeping statement by the solicitor for the plaintiff, who urged that as the defendant had entered an appearance to the action his client had no alternative

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but to proceed. This view, however, was immediately controverted by the Commissioner, who argued that the defendant had probably consulted a solicitor who had not the honesty to tell him there was no defence. Mr. Kerr went still further in his candour and ventured on the opinion that solicitors as a rule cared for nothing except to run up bills of costs. It is to be feared that this general impeachment of the profession contains a good deal of unpalatable truth, but so long as the state of the law allows solicitors to pile up costs entirely out of proportion to the matter in dispute they can hardly be blamed for taking advantage of their privilege. What is required is a change in the laws and a change of the lawyers, and we would suggest that Mr. Kerr should collaborate with the Lord Chancellor in drawing up a bill to regulate the scale of maximum fees in accordance with common sense as well as with common law.

Sometimes, when an appropriate opportunity offered, the Commissioner would refuse a successful party his costs with the remark : "This Court does not exist, you ought to know, for the sake of putting money into the pockets of the lawyers, like the High Court."

On the other hand, he had no sympathy with persons who, although well able to do so, did not pay their just debts but sheltered themselves under the protection of the Bankruptcy Court, or of a bill of sale given over their furniture to a wife, relative, or close friend. In all such cases he would always give due effect to the protection which the law afforded, but would remark with caustic severity, where the debtor proved that he was only the servant of his wife although he appeared to be the owner of premises, that the debtor's position was not a "dignified" one. In an interpleader case the Commissioner was once heard to define a bill of Sale to be a document given to secure one creditor and cheat the others. He used sarcastically to say that "persons without

Views upon Bankruptcy

means," such as those above described, are always well-dressed, and he would sometimes add, "and always go about in cabs," remarking, "I can't afford either." If protection was claimed by reason of the Bankruptcy Law the Commissioner, while of course giving effect to the Law as it stands, often declared that he did not believe in any Bankruptcy Law, and, for himself, disputed the moral right, even of the legislature, to cancel a man's just debts and give him a fresh start. And he would add sometimes: "If you complain of the Bankruptcy Laws you should complain to the Bankruptcy Court, and tell them that their proceedings are a farce. I cannot alter them. I should know what to do if I had the chance. I would not give the rights of citizenship to those who do not pay their debts. I would not allow them to become Judges, Members of Parliament, or Common Councilmen." So far from sympathising with dishonest debtors who avoided payment, he frequently said plainly that, in his opinion, "A man who does not pay his debts ought to be made a social outcast," and declared that, if he had his way, he would oblige all those who had been bankrupt to wear a parti-coloured or other indicative dress. The idea that debtors who, under the guise of legal protection, left their debts unpaid, should be so distinguished, is not, as has been sometimes ignorantly assumed, a mere "fad" of the Commissioner's. It was at one time the law that soldiers could not be arrested (then the great remedy). A case is to be found in the legal Reports of an action where the plaintiff was a man of whom another had said, "I saw thee in thy red dress."

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Probably this case furnished his idea to the Commissioner.

When it was mentioned to him that a defendant had promised to pay a debt he would make one of the following remarks: "Have you not lived long enough to know that promises are made to be broken? If a man breaks a promise never believe him again." Or: "The man who promises to pay his debts never does it. The man who does it pays instead of promising."

From the strictness with which he always required proof of means to be given before he would make a commitment order it came to be accepted almost as a maxim in the City that "it is impossible to get a commitment order out of the Commissioner." Never was there a greater mistake. In a case where the Commissioner was satisfied of the debtor's ability to pay, nothing gave him greater pleasure than to enforce payment.

A story he never tired of telling was that he once made a commitment order against a debtor who was proved to have lately entertained his friends at a champagne lunch, that the Bailiff of the Court actually arrested him while presiding at another, but that some Judges forming a Divisional Court nevertheless released him because there appeared to them to be no sufficient proof of means. The hotel-keeper might have supplied these lunches on credit, and no proof that actual payment for them had ever been made had been given! The case is reported in the *Times* of June 11, 1898.

In view of The Commissioner's opinions as to the manner in which County Court Judges ought to make

Views on Commitment for Debt

use of the power of imprisonment, one of the most powerful engines at their command to in a fit case compel the payment of a just debt, which were set out in an early chapter, and of those which he entertained about domestic credit, the following remarks recently made by the Lambeth County Court Judge (Judge Emden) will be read with interest. They are taken from the *Times* of February 6, 1903 :—

Imprisonment for debt in County Courts has been the reason at the bottom of the giving of unreasonable credit, which is answerable for endless misery among the poor. It would never have been given without this power to hold over their heads. This unreasonable credit is mainly given to the lower working classes and agricultural labourers of the poor and ignorant class, frequently through their wives. *If the number of children to be supported be carefully considered in each case, the great majority of cases disappear, and the few rare cases remain to which only the Act was intended to apply.* The argument as to helping these classes when in distress does not apply to the question of unreasonable credit. Moreover, it is better not to attempt to alleviate distress when the end is to apply to commit to prison. As illustrating in hard facts these statements, I take Maidstone as a country district. When I first went there nine or ten years ago there were nearly 1,600 applications for imprisonment per annum and 63 imprisonments. Now, notwithstanding every increase in the ordinary business, there are 230 applications and 10 imprisonments. At Lambeth, as an instance of London, there were nearly 1,600 applications for imprisonment and 66 imprisonments. Now there are 970 applications and 24 imprisonments a year. The longer I am on the Bench the more I become convinced that the Act is a good Act if properly administered ; wrongly administered, it causes hardship and misery.

The words quoted above are in exact accordance with the most recent decisions of the Court of Appeal on this vexed and little understood question of imprisonment. That Court has lately laid emphasis

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on the need of it being proved against the debtor, in every case where it is sought to imprison him, that he has "means" to pay. The wise Commissioner always gave great effect to the considerations printed above in italics. It is becoming more and more the fashion with County Court Judges to do this. The writer, as a humble "deputy," has long followed the teaching on the subject given him by the Commissioner, and the result of his small experience enables him to emphatically testify to the truth alike of the principles put forward by the Commissioner and of Judge Emden's words.

The Commissioner's anxiety to oblige debtors to pay their debts whenever he thought that they really could do so is not only shown by the views about such debtors expressed by him as mentioned above, but by a further fact. The Commissioner, if he did not actually invent the process, was the first amongst County Court judges to discover that equitable execution by means of a Receivership would often produce payment where nothing else would, and used whenever practicable to put this powerful means of compelling payment into force. This he did because, in his opinion, there is an injustice in the obstacles which modern legislation throws in the way of the creditor by making him first prove the debtor's means instead of the debtor having to prove his own inability to pay, and holding that as this was the law, justice entitled the debtor to in all cases have strict proof of means given against him.

The first aim of every Judge is to do justice, and what may at first sight seem to be idiosyncrasies and

Described as Sitting in Court

eccentricities on the part of the Commissioner were in truth systematic attempts to attain this great end.

A perfect Judge will never be found sitting upon a human Bench. It certainly is not claimed for the Commissioner that he was one. His greatest failing on the Bench, apart from the somewhat unfavourable impression which his rapidity sometimes produced, was that he beyond doubt failed to always sufficiently "talk down" to his juries and to give them that assistance which a jury are entitled to expect from the Judge. Without being actual fools—a class of persons of whom the Commissioner was naturally most impatient—we do not all pass our lives in Courts of Justice, or necessarily possess such a familiarity with the law as to be able, in a satisfactory way, to apply the conclusion which is drawn from disputed facts without instruction from a lawyer, save in but the most simple cases.

A fair appreciation of the Commissioner as a Judge was contained in the *National Observer*, for February 20, 1892 :—

MODERN MEN—MR. COMMISSIONER KERR.

Within a stone's throw of "Guildhall's narrow pass," the City Fathers have "edified" a decent building, for the needs of the City of London Court. The thing has already lost its novelty of aspect, for smoke and fog at once imparted an air of antiquity (as to every structure in Babylon), while the tread of human feet has marked, has begun to wear, its corridors and stairs. The Court-house is apt enough, but unless you like you are not apt to linger there any part of a summer's day. Yet if it be your fancy or your fate to discover how the smaller judicial business is done in the heart of London, a sense of ludicrous incongruity shall take you when you consider the manners and the methods of the presiding Judge. He sits well

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within sound of Bow Bells, yet his ways and his accents savour of the rugged North, not so much of the Parliament House as of the streets and wynds that compass it about. Then, at the core of a complex civilisation, he dispenses civil justice after the fashion of the Cadi under the Palm, or (to go North again) in the manner of those ancient lairds who used those days they could spare from vexing the flocks and herds of the "fause Southron" in settling the disagreements of their retainers. Last of all the method is a success. Mr. Commissioner Kerr has held his position since 1859. He has done his work well; and that work is so peculiar that there would be some difficulty in finding a thoroughly suitable successor. When shall the same be said of the legal Dii Majores, from the Lord Chancellor down to the newest puisne Judge?

The City of London Court is an institution with a long and curious history. That, though, is a matter for the antiquary; since for all practical purposes the Court is now a County Court, which species of tribunal has many qualities of interest. Before the lurid horror, the deadly fascination of certain sorts of crime, you are apt to forget how narrow of interest, how stereotyped in form, are most of its varieties. In the High Court again the pace (for the rare *cause célèbre* must not mislead us) is slow, and the matter mainly technical; but the lower Civil Court so focuses the life of a district that in a few hours' space you shall learn there what are the beliefs, customs, manners, occupations, character, of that district's inhabitants. Here indeed is the raw material of many tragedies, romances, comedies. In the High Court a day's sitting disposes of some five to eight cases; in the busier County Court it is concerned with some hundred. Unfortunately the English judicial system provides not for the promotion of the minor Judges. They leave hope behind that accept a seat on these inferior benches; so that rising men are forced to disdain a set of positions that in their own way are desirable enough. Desirable—yes, but how hard to fill! The superior Judge has all the assistance that what is called "the best legal talent" can lend him, while the methodical way in which his cases are threshed out reduces the possibility of error to a minimum. Below there is no time to spare, and the Judge is thrown upon his own resources. His requirements are a complete and general knowledge of the field of law, and not a perfect acquaintance with one particular angle thereof; a knack of seizing instantly the real points at issue; the ability to make an end with all convenient speed

Described as Sitting in Court

and to get through his list, neither slurring nor evading. 'Tis perhaps an ideal portrait, but in some ways Mr. Commissioner Kerr might sit for it. He keeps his work well in hand, though his daily list is so large that it would put most Judges hopelessly into arrears; yet he so satisfies those whose duty, or their fate, it is to appear before him, that some that yawn, or curse, or fume, or fret, in those stuffy minor Courts, which are the shame of London, have been heard to long for an hour of Mr. Commissioner Kerr. And were this all, he might have passed through life successful and obscure; yet his name is known to thousands who never heard of his judicial superiors. That is because his habit is to interlard the judicial utterances with a running commentary on men and manners which is always piquant and sometimes true. His apothegms are vastly in request of them that edit evening and Sunday papers. Look at the square corners of such sheets, and you are tolerably sure to find a paragraph headed, "Mr. Commissioner Kerr on Servants"—or Lords, or Trade, or Marriage, or anything. More than that, forgetting a certain proverb as to an "ill bird" and its nest, he is fond of gibling at his profession. Thus, a Barrister is brought before him on a judgment summons, and he dismisses the case with the reflection that "to be a junior member of the Bar is proof positive of want of means," or he will cut short a long-winded pleader with a grim, "None of your oratory; come to your facts" (has not Lord Bacon said that "to moderate length, repetition, or impertinence of speech" is the Judge's duty?); or he will grudgingly admit that "lawyers are necessary evils," or that "even solicitors must live"; howbeit he is still fonder of animadverting on the all-too-natural interest in costs of that much-abused tribe, while the imbecility of legal methods is an ever-congenial theme. Such remarks are impertinent in both senses of the term; but they "fetch" the vulgar. They are cynical, and cynicism has always a surface wisdom of its own. More, they are put tersely and not unimpressively, so that makes them stick in the vacant and half-educated mind; and they deal with subjects of interest to a vast body of people. Still, the popularity of the Cadi, however honourable, is not everything: and in one place the name of this particular Cadi is held in anything but esteem. That place is the Common Law Bench of the Supreme Court. When the decisions of minor tribunals are appealed from, it is desirable to know the facts of the earlier stage; and a brief summary of the evidence and the points at issue taken by the inferior

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judge is obviously the most satisfactory record. But the Commissioner errs by excess or by defect. He will sign a shorthand record which is far too diffuse, or he will put in a set of notes that are far too meagre and starved. The Divisional Courts are found reflecting on him in most solemn terms, but to no purpose; even the "dread name" of *Mandamus* he treats with the scantest respect. It may be want of time, it may be stubbornness, it may be "I know better," it may be a blend of all three. But the fact and its inconveniences are there, while the remedy is yet to seek.

The peculiarities of the Commissioner's procedure naturally afforded ready and ample food for the comic papers. The following sketch of him and his Court appeared in *Punch* of February 3, 1883:—

ROUND ABOUT THE CITY COURTS.

Smart-looking lawyers and pigeons, on the whole the latter stouter and sleeker than the former. Rather curious this, as, when a pigeon gets into the hands of a certain kind of solicitor, the poor bird gets effectually plucked. But these pigeons are knowing little creatures, flying about the yard of the Guildhall and under the immediate patronage of the Lord Mayor and the Court of Aldermen. It is strange that the City Corporation should have chosen pigeons for wards—it would have been more appropriate had they selected doves—turtle-doves. However, there are the pigeons, and they perch at the door of "the Commissioner's Court." The pigeons are left behind, and this is the interior of the hall of Justice, over which that good Scotch watch-dog, Commissioner Kerr, presides whenever it happens to be open. The great man is seated on a stuffed chair (East of Temple Bar stuffing is *de rigueur*) under the City Arms. On either side of him is a wainscoting, semi-circular in form, suggesting that behind the boards is plenty of accommodation for the brooms, brushes, and other impedimenta of the old lady who does the charing. No doubt to remind the Commissioner that he should keep cool, and not lose his temper, there is an enormous barometer, which seems to have been borrowed from a scene in the after part of a Christmas pantomime. The general impression, on entering the Court, is that

“Punch’s” description of Court of

everybody is talking at one and the same time. And the impression is not altogether erroneous. The plaintiff and the defendant, in spite of their representatives being present, are hard at work contradicting one another. Principals in other cases are loudly discussing their chances of success, while two solicitors in strange looking stuff gowns are loudly contending for vocal mastery. A half-hearted effort to preserve order is made by placing a couple of placards on the walls, requesting plaintiffs to keep on one side of the room and the defendants on the other.

“Why are these solicitors wearing gowns?” asks a newly called and inexperienced Barrister, who has looked in possibly with a view to obtaining some “soup,” a nickname for chance briefs.

“Out of respect to the Commissioner, I think, sir,” replies the cheeriest of City Policemen—protecting a barrier. “His Honour seems to like it.”

The Commissioner appears to glory in the noise. He waits until he catches something with which he disagrees, and then pounces down upon the speaker like a cat upon a mouse. He reminds one of an agile performer playing upon half a dozen kettledrums. Now he gives a tap to the defendant; now to the plaintiff’s advocate; now to the mild-looking gentleman in a Barrister’s wig who, seemingly, is the Court’s Registrar; now to four witnesses who will speak together. Then he keeps quite silent until the two advocates are once more fighting hammer and tongs, when, after a few minutes’ pause, he suddenly brings the case to a hurried conclusion by abruptly announcing his decision. The noise does not cease. On the contrary, another pair of suitors are impatient to be heard, and the chatter recommences with renewed energy. Again the Commissioner deals out his knockdown blows right and left with the strictest impartiality, until once again the time arrives for him to stop the proceedings in the usual manner. The title of the Court might be “Rough and Ready” in recognition of the hearty simplicity with which it is conducted. It is only fair to add that in spite of the noise and confusion the best feeling seems to prevail everywhere, so much so that it is no unusual thing to see a Police Janitor offering a pinch of snuff to a gown-glorified solicitor.

The following is a humorous sketch of the Commissioner’s methods of trying a case without a jury.

Commissioner Kerr

It is, of course, considerably exaggerated, but yet is, on the whole, a not unfair representation of a type of case one meets with in County Courts. A noisy, brazen, horsey Hebrew costermonger comes up from the East End, tells a tale, marked by extreme "bounce" and assumed carelessness and recklessness as to money altogether incredible in its details, but, on the strength of the *subtratum* of truth entered in it, sues a demure, quiet-looking old sinner of great apparent respectability, who is, nevertheless, in truth a "pious fraud." Its general tone is not wholly unlike the following extract from a newspaper :—

MR. COMMISSIONER COMIC KERR THAN EVER.

Scene: The City of London Court.

MR. COMMISSIONER : Now then, next case ! Where's the next case ? If that next case doesn't come up at once I'll commit myself.

CLERK : Case of *Rothschild* versus *Gladstone*, my lud.

MR. COMMISSIONER : What, Baron Rothschild and the Grand Old Man ?

CLERK : Yes, my lud.

MR. COMMISSIONER : Now then, Old Shylock, what's the matter with you and Judas Iscariot Gladstone, eh ?

BARON ROTHSCHILD : I protest against your remarks.

MR. GLADSTONE : And so do I. I am not Judas Iscariot.

MR. COMMISSIONER : I apologise to Judas Iscariot for presuming that you were. *De mortuis nil nisi bonum*. What is it, Baron ?

ROTHSCHILD : A little dispute—a trifle ! Mr. Gladstone and I were tossing for fivers the other day, and I won twenty. He paid me, and among them was one on the Bank of Engraving.

MR. COMMISSIONER : Oh, you want your pound of flesh, do you ?

ROTHSCHILD : No, I don't : I paid away the note in ignorance to the Lord Mayor, who, on trying to pass it, got locked up. The

Parody of Case before

Lord Mayor lost his temper, and hit me on the nose. I went to Mr. Gladstone and hit him on the nose, and he hit me on the hat with his birthday axe, and now I want to recover the price of a new hat.

MR. COMMISSIONER: That's it, a bloated millionaire comes and takes up my time. If your ancestor had stopped in Germany with all the other Germans——

ROTHSCHILD: What have my ancestors got to do with my hat?

MR. COMMISSIONER: I don't know. The one in question may be the original one your family came over in.

ROTHSCHILD: You are very insulting.

MR. COMMISSIONER: I'll commit you! Now then, you radical old humbug, what's your version of the story?

GLADSTONE: When the Baron came to me I felt that there were three courses open to me.

MR. COMMISSIONER: None of that here, Sir. You are not in the beastly House of Commons. I consider that half the crime in this country is the result of a House of Commons.

GLADSTONE: I won't argue with you. I admit I hit the Baron's hat, but it damaged my birthday axe.

MR. COMMISSIONER: I dare say. A hat made by one of those foreigners who are ruining English trade.

ROTHSCHILD: I bought it at Death's, in Oxford Street.

MR. COMMISSIONER: Then how dare you? Why didn't you go to the stores. I look upon the co-operative stores as the greatest blessing, after myself, that the country possesses. I buy my liver pills there at ninepence a box.

GLADSTONE: Have you tried taraxacum for the liver?

MR. COMMISSIONER: How dare you prescribe for me, Sir. My opinion of taraxacum is that it is about as useful as steam. I consider the present depression in trade is entirely due to the introduction of steam.

GLADSTONE: If you'll kindly decide this case, and keep your opinions for your private amusement, I shall be obliged. I have a Cabinet Council at two.

MR. COMMISSIONER (furious): You insolent fellow! How dare you! Decide this case I will certainly; I fine you £10 with twenty strokes of the birch and three years' police supervision, and I order Rothschild to leave his old hat in Court. It will do for my coachman.

Commissioner Kerr

The following extract cleverly caricatures the Commissioner's method of sending a case of "oath against oath" for trial by a jury. It is taken from *Gog and Magog* (November 27, 1879):—

THE CITY SOLON.

If you are neither plaintiff nor defendant there is amusement to be derived from a visit to the City of London Court. To use the vernacular of Basinghall, Mr. Commissioner Kerr is a "caution." It is fashionable to ridicule this gentleman's decisions and to laugh at his mannerisms; but there is much sound common sense about the president of the little Court in the precincts of Guildhall, where small creditors and debtors fight their battles. He gets through a tremendous amount of work. He stands no nonsense. He shows no compassion to creditors. "You should not give credit," says he. He thinks ready cash should be the basis of all small transactions, and he is right.

The words of the Commissioner as a rule are few, but they are to the purpose. The following is a specimen of his style.

[The case *Jones v. Snooks* is called. The plaintiff enters the box and is sworn.]

Judge: What is your name?

Plaintiff: John Jones, Your Honour.

Judge: What are you?

Plaintiff: A private bank clerk of nine years' standing.

Judge: What is your case?

Plaintiff: I entrusted defendant with some collars and cuffs to wash, and he lost one pair, value eighteen pence, and I sue for that amount.

Judge (to defendant in box on other side): What have you to say?

Defendant: I returned all the things to the plaintiff.

Judge: On your oath?

Defendant: No, on Wednesday week.

Judge (severely): Keep to the point, sir. (To plaintiff.) Do you hear what this man says?

Plaintiff: Yes, Your Honour.

Judge: One swears one way and one the other,

Imaginary Trial before

Plaintiff: What do you advise?

Judge: I!! I advise nothing, but you can have a jury to try the case.

Plaintiff: But how is it likely to be settled?

Judge: Well, I hardly know. If all the jurymen happen to be private bank clerks of nine years' standing most likely they will find for you, but if they happen to be collar-dressers they will find for the defendant.

Plaintiff: I think I will withdraw my claim.

Judge: Oh, very well; next case.

CHAPTER VII.

THE COMMISSIONER AT THE OLD BAILEY ADMINISTERS
STERN JUSTICE TEMPERED WITH APT MERCY—
TRAVESTIES OF HIS WAYS AT THE OLD BAILEY.

THE characteristics and methods of a Judge presiding in a Criminal Court will be in most respects identical with those possessed by the same Judge when presiding in a Civil Court. The main features which distinguished the Commissioner when sitting as Judge in a Civil Court, have been fully described in the preceding chapter, and this makes it unnecessary to present any lengthy description of him when presiding in a Criminal Court. The writer is, moreover, the less able to present such a picture, because he never practised regularly at the Old Bailey when a junior, and since he "took silk" in 1885 has never gone there at all.

The Commissioner, it has been explained,¹ sat at the Old Bailey as a Judge by virtue of his office as "Judge of the Sheriff's Court," and derived the title of "Commissioner" from the fact that he did so. Just as Assizes are held in every county a certain number of times in every year, under com-

¹ See Chap. V., *ante*, p. 115.

As "The Commissioner"

missions issued by the Crown, as the fountain of justice, directed to certain persons who are usually, but not necessarily, Judges of the High Court, commanding them to act as Judges on these occasions and in those counties, so an Act of Parliament, known as the Old Bailey Act, 1852, directs a commission to be issued to certain persons commanding them to sit at the Old Bailey "Sessions" at certain times in each year (once a month) and there exercise as Judges the statutory jurisdiction which the same Act confers on these "Sessions."

Amongst the persons¹ to whom the Act requires that this commission from the Sovereign shall be addressed, besides the Lord Mayor, the Justices of the High Court, and the Aldermen, are "the Judges of the Sheriff's Court." Under such a commission "Commissioner Kerr" sat at the Old Bailey once a month for some thirty years, viz., from about 1859 till early in the nineties! He united in his own person both the "Judges of the Sheriff's Court," having been elected to each of the Judgeships. As the Sheriff's Court had no criminal jurisdiction, he, when sitting at the Old Bailey, was properly styled "Commissioner," though he was in truth only one of the several Commissioners empowered to sit there. But having no colleague in exactly the same position, he grew to be called "The" Commissioner.

As has been seen in a previous chapter, the newly elected Judge of the Sheriff's Court took his seat at the Old Bailey as a Commissioner there on May 13,

¹ Mentioned *ante*, *ubi sup.* p. 115.

Commissioner Kerr

1859 ; and on that occasion received the congratulations and good wishes of the Bar of the Court.

The best-known criminal trial that ever took place before Commissioner Kerr as one of the Commissioners of the Old Bailey was that of the once notorious Madame Rachel. This is technically known to lawyers as the case of *Reg. v. Leverson*—Leverson being Madame Rachel's real name. The trial took place on September 22, 23, 24 and 25, 1868. The offender had been tried at the Sessions at the Old Bailey, held in the previous month of August, 1868, before Mr. Russell Gurney, Q.C., the then Recorder. On this occasion the jury had failed to agree, and had accordingly been discharged without a verdict, and the prisoner put a second time upon her trial before Mr. Commissioner Kerr on the dates named. A full report of this trial was from day to day contained in the *Times* newspaper. The case excited so much interest that these daily reports were soon afterwards reprinted and published by a firm of Diprose and Bateman, who at that time carried on business in Portugal Street, in a pamphlet which was sold at the price of one shilling, a copy of which is still to be found in the Library of Lincoln's Inn. From this it appears that Madame Rachel was a person who supplied those ladies who were foolish enough to buy them with cosmetics bearing the most extraordinary names, and who advertised that she was able to render her patronesses "beautiful for ever." The story for the prosecution was that the defendant had pretended to a certain Mrs. Borradaile that a noted nobleman then much about Town had fallen violently in love with

Trial of Madame Rachel

her, and intended to marry her if she submitted to the defendant's treatment, and was made beautiful for ever; that she had by this pretence induced Mrs. Borradaile to sell out her fortune to pay for the treatment, and for various of the strange cosmetics just mentioned; that in pursuance of this fraud various love-letters, which were pretended to come from Lord Ranelagh, had been shown to Mrs. Borradaile, the prisoner accounting for the bad spelling of these by saying that his lordship, having lately hurt his arm, had been compelled to employ an amanuensis. The prosecution further charged that Madame Rachel had also obtained a specific sum of £400 under the pretence that it required to be spent in preparation for the marriage alleged to be about to take place, as well as certain plate and jewellery which were Mrs. Borradaile's property. The total amount of the property thus obtained was alleged to have been of the value of no less than £5,300. The list of cosmetics sold by the defendant was proved to include "Royal Nursery" soap, at two guineas a box; and also "Royal Palace" soap, "Royal Prince's" soap, "Royal Alexandra" soap, and "Prince of Wales" soap, all at the same price per box; likewise "Honey of Mount Hymethus" soap, and "Peach Blossom" soap on similar terms; with, by way of variation, "bottles of Jordan water," for the modest sum of ten or twenty guineas a bottle.

Such was the case for the prosecution. That for the defence was that Mrs. Borradaile had been indulging in a mere vulgar intrigue with a man of low class who was hinted to be a common

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soldier ; that the name of Lord Ranelagh was a mere "blind" arranged between the prisoner and the prosecutrix in order to deceive the family of the latter ; and that the lady's knowledge of this was pretty conclusively shown by the fact that among the articles known by her to have been purchased for her lover were shirts, socks, and other articles of common wearing apparel of which she could not possibly have supposed a person in Lord Ranelagh's station to stand in need. At the first trial no witnesses had been called in support of this ingenious theory, at the second the eloquent Counsel who had defended Madame Rachel at the previous trial with the result that the jury were unable to agree, although his statement had been supported by no evidence, was betrayed into the indiscretion of calling witnesses. In the old days, and before it was lawful for prisoners to give evidence, it was an accepted tradition of the Bar that in a "shaky" case it was as a rule unwise to call witnesses for the defence. The discretion of Counsel about the matter was, however, occasionally over-ruled by the client or his attorney. Indeed there was a story that on one occasion a celebrated defender of prisoners, having been forced by his attorney to call witnesses on the prisoner's behalf, did so with the result that the accused was sentenced to be hung ; and that the counsel, so soon as he met the attorney outside the Court, remarked to the latter, "Sir, when you meet that unfortunate client of yours, as you certainly will do" (well, at a place not marked on any authentic map), "go down on your knees and beg his pardon for

Trial of Madame Rachel

having sent him where you find him by having made me call those witnesses." The calling of witnesses in Madame Rachel's case was as little successful as it had been on the occasion just mentioned. One of her principal witnesses, when pressed on the subject, would only swear that the so-called Jordan water "came from the East"; and when it was suggested that "the East" possibly meant Whitechapel, could say no more than that the water was duly consigned by "an agent." In summing up, which he did with characteristic brevity, Commissioner Kerr did little more than tell the Jury that "the charge substantially was that the prisoner, by representing that the marriage was about to be effected by her means between the prosecutrix and Lord Ranelagh, had induced Mrs. Borradaile to part with large sums of money and with property of considerable value. . . . The jury must be satisfied that, by the representations of the prisoner, Mrs. Borradaile was induced to part with her money, and that these representations were false and fictitious." The jury, after a short deliberation, found the prisoner guilty. In passing sentence, Commissioner Kerr remarked to the prisoner, "You pillaged her of everything she had," and inflicted a punishment of five years' penal servitude.

Opinions differed as to the mode in which the Commissioner had tried the case. A single specimen of the views on each side will suffice. Said the *Times*: "Whatever may be the satisfactory features of the case, we fear that we cannot include amongst them the fact that it was tried by Mr. Commissioner Kerr." Retorted the *Daily Telegraph*: "Mr. Com-

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missioner Kerr will undoubtedly stand higher in professional repute for the signal ability which he displayed in his summing up of this very intricate enquiry." The impartial remark of the cautious *Express* conveyed the exact and accurate truth when it said: "Our contemporaries take different views of the judicial conduct of Mr. Commissioner Kerr, some of them thinking that his impartial summing up will add to his professional reputation, and others maintaining it to be an unfortunate circumstance that the case was tried by him."

The severe sentence, as it was admitted to be, which the Commissioner had passed, led to an appeal being brought, with the Commissioner's consent, to the Court for Crown Cases Reserved. In an earlier chapter, it has been pointed out to have been at that time the subject of much doubt whether the provision in the County Court Acts, 1865 (sec. 4), and 1867 (sec. 35), by which the old name of the Sheriff's Court had been taken away and the new one of "The City of London Court" was substituted¹ had not had the effect of there being no longer any "Sheriff's Court of London" in existence, so that Commissioner Kerr could no longer sit at the Old Bailey, by virtue of a Commission directed to him as "Judge of the Sheriff's Court." Consistently with the view taken, when the House of Lords, in Mr. Osgood's case (that of the superseded Registrar) decided that the *Constitution* of the Court remains unaltered though its name (and that only) has been changed, indeed in accordance with it, the Court for Crown Cases Reserved (as was

¹ See *Ante*, Chap. V. pp. 155, 158, and 168.

Legal Importance of Rachel's Case

also mentioned in the previous chapter) unanimously held that the Jurisdiction of a Judge of the City of London Court to sit at the Old Bailey, under a commission directed to him as Judge of that Court (which was formerly called the Sheriff's Court) still remained unaltered.

A point of great practical importance with regard to the constitution of the Old Bailey was also settled by Madame Rachel's case, to which reference has just been made. For it was there decided that, though power to sit at the Old Bailey is given to the Commissioners named, "and any two" of them, yet the two sitting together need not necessarily be the same two. Commissioner Kerr, till this had been actually decided, felt very great doubts on the question, and advised that during any trial, the same two Aldermen should always sit with him. One day, it is said, a tired Alderman desired to leave, and asked the Commissioner if he could do so. He was told that he could not. "Why not? What good am I?" he plaintively inquired. "About as much good as one of the wax figures from Madame Tussaud's," rejoined the Commissioner; adding, "but if Parliament chose to say I must keep one of these always beside me in Court, I should have to do it." The Court for Crown Cases Reserved got over the point that one Commissioner sitting alone would not suffice at a trial, by saying that the ordinary practice at Assizes shows that two Commissioners need not be sitting together, but that it will be enough if any two of them are sitting at one time in separate parts of the same building. This supposed analogy furnished by

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assizes, where it is the practice for each of the two presiding Judges to occupy different Courts, furnishes, in truth, really no analogy. For at assizes the clerk of assize is always "in the Commission." The latter's being present with the Judge satisfies the terms of the Commission, which requires that it shall be exercised by the Commissioners to whom it is addressed, "or any two of you." It indeed has happened, within the writer's personal knowledge, that a verdict was once set aside by the Home Office as a nullity, and the prisoner set at liberty, where it had been taken, in the early morning, by an official of a Circuit, and a Barrister on it, and in the absence of both the Judge and of the clerk of assize. The decision of the Court for Crown Cases Reserved said that a trial at the Old Bailey is regular, even although the same Alderman was not present throughout it. But the fact that the Court for Crown Cases Reserved took time to consider its judgment, and that this, when at last delivered, contained the flaw in its argument which is pointed out above, shows that the doubts entertained by the Commissioner were not unreasonable.

Commissioner Kerr, when presiding at the Old Bailey, or as a magistrate, displayed in a different form that characteristic love of strict justice, with an anxiety to protect the public interests,¹ that kindly sympathy with the oppressed and poor, which distinguished him when sitting in his Civil Court, and also those peculiar personal views on technical matters of detail, such as dislike to many or long speeches, and to "full" notes,

¹ See *ante*, Chap. VI. p. 208 *et seq.*

Some Terse "Summings-up"

and a love for terse summings-up to the jury, which he habitually showed in his Civil Court. Once, too, he delivered a record summing-up in a criminal case. Just as he had once summed-up a civil case in two words,¹ so he summed-up a criminal one in three. An evidently "old hand" concluded a long speech, betraying too much intimacy with the procedure and phraseology of Courts of justice in the speaker to permit of it being supposed that he was in one for the first time, by remarking, "And now, gentlemen, I have no more to add." "Nor have I," said the Commissioner to the jury by way of summing up!

Commissioner Kerr's intense love of strict justice led him to appear stern and unyielding, and to be regarded generally by those who did not really know his character, as being "a severe Judge." Yet he was never an unpopular one, and, as will appear more fully presently, knew well how to temper strict justice with mercy, when circumstances called for this.

Just as a Judge in a Civil Court gets to recognise particular classes of suitors, and to deal with them, speaking generally, on their merits as a class, so does a Judge in a Criminal Court soon grow to recognise particular classes of prisoners and particular types of crime.

With hardened and habitual criminals the Commissioner always dealt severely. As he once remarked to the writer, "As a rule, it is useless to give another chance to a coiner who has been convicted a second time. If he dies while under sentence, no harm is done, for he never will be of any good."

¹ See *ante*, Chap. VI. p. 224.

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So again he always dealt with stern, unflinching justice with persons who had been guilty of crimes of savage cruelty and violence, for he had no sympathy with them. Garotters dreaded him. Moreover, upon those who had assaulted defenceless women and children he always "came down hard."

His desire to protect the interests of the public, especially those of the poor, made him again especially severe upon those whose actions were dangerous to the public health. Just as, in his Civil Court, those who endangered this by letting unwholesome houses, with their drains out of order, were reminded by him that property has its duties as well as its rights, and the Billingsgate ring, who put off bad fish upon the hawkers, found themselves punished in their pockets when the Commissioner could reach these vulnerable places, so also those who sent unwholesome meat to market met with severe personal punishment at his hands. The following is an instance taken from the *City Press*, of December 5, 1863 :—

At the Central Criminal Court on Wednesday, before Mr. Commissioner Kerr, Alexander Stewart, a pig dealer residing at Cooper Angus in Perthshire, was indicted for sending a quantity of diseased meat to Newgate Market, on the 24th of September last. The prosecution was instituted by the Commissioners of Sewers of the City of London. The evidence clearly showed that the prisoner had purchased two cows when suffering from lung disease, for the sum of £3, and had them slaughtered, the animals dressed, and quartered them in the usual manner, and consigned the quarters to a salesman in Newgate Market for sale. Four of the quarters were, however, seized in London, and condemned as unfit for human food. The prisoner was convicted, and sentenced to be imprisoned for twelve calendar months, to pay a fine of £50, and to be further imprisoned until the fine was paid. It came out in evidence during

Severe on Dealers in Diseased Meat

the trial that hundreds of diseased animals had been sent up for sale to the London markets from Cooper Angus alone. It is to be hoped, therefore, that these sentences will have the effect of greatly diminishing the infamous traffic.

It appears that "the infamous traffic" thus exposed and punished still continued, for in the following year there appeared the following in the *Lancet* for April 16 (1864):—

We direct attention to the trial of John Thomas Teasdale, a respectable looking young man, a butcher at a place called Pinchbeck, near Spalding, in Lincolnshire, who was found guilty of a misdemeanour for having sent to a salesman in Leadenhall Market a quantity of meat that was not fit for human food. The trial exhibited a state of things which the metropolitan authorities are determined to check. The beneficial results of the vigilance which has been exercised, and of the direction of public attention to the importance of the prevention of such foul practices, are now manifest. It was shown that the prisoner purchased a cow, knowing her to be in an advanced stage of disease, that he had her slaughtered and dressed, and consigned her to a London salesman, Mr. Lee, of Leadenhall Market, who, on the arrival of the carcase, immediately observed the condition, and communicated with Mr. Wylde, one of the inspectors of the market, who seized and destroyed it. The jury found the prisoner guilty, but recommended him to mercy on account of his youth. Mr. Sleigh, who prosecuted, informed the Court that notwithstanding the numerous convictions for this offence that had taken place, there had been no less than two hundred thousand pounds weight of diseased meat seized in the markets belonging to the City of London during the last year. Mr. Commissioner Kerr, before whom the case was tried, said the offence was a serious one, it was the poorer classes who were most likely to be sufferers by such proceedings, and, under all the circumstances, while fully desirous to give effect to the recommendation of the jury, he felt it his duty to sentence him to be imprisoned for four months, and to pay a fine of £50, and to be further imprisoned till that fine is paid.

This is the only way in which a stop can be put to this dangerous

Commissioner Kerr

and disgraceful practice. Mr. Commissioner Kerr well maintains his reputation as a discriminating Judge, in not permitting the incomprehensible recommendation of the jury to prevent him from inflicting adequate punishment. It is a question of common interest, because one of public safety, that every effort be made to preserve the health of the poor, and prevent the crowded metropolis being the centre of infectious disease, of which there is no more certain source than diseased food, in conjunction with crowded dwellings. The name of Mr. Lee, the meat salesman of Leadenhall Market, is deserving of honourable mention for the promptness he displayed in bringing to justice one who sought to traffic in food unfit for the maintenance of human life.

It has been already said that the punishments inflicted by the Commissioner upon those who committed savage crimes of violence, such as garotters, were usually severe—so much so that these criminals dreaded him. Public opinion generally appears to have approved of his sentences. The following extract is taken from *Punch* of September 6, 1873 :—

PENAL PRACTICE OF MEDICINE.

The legal profession has an ornament in Mr. Commissioner Kerr, who, if his lot had been cast in the profession of Physic, would have equally adorned that. Such, at least, is the supposition suggested by the subjoined extract from a column of news :—

Two men, named Pillard and Ives, having been convicted of a robbery with violence, on a tram conductor at Holloway, the learned Commissioner said for the last few sessions there had been a remarkable absence of such offences from the calendar, and he had hoped that the sentences ordinarily pronounced for that class of crime had, at last, succeeded in deterring persons from engaging in it. This, however, was a very bad case and, being determined if possible to put down the system, he should sentence the prisoner to be twice flogged—twenty lashes upon each occasion. Pillard must be kept in penal servitude for fifteen years, with five years subsequent police supervision, and Ives must be imprisoned, and kept to hard labour, for two years. Lewis Taylor, for a robbery with violence at Muswell Hill, was sentenced to seven years' penal servitude, and five years' subsequent police supervision, and to be twice flogged, receiving each time twenty lashes with the "cat."

The foregoing piece of satisfactory intelligence evinces a perception, similar to the medical sense which, when a remedy of known

Severe on Personal Violence

efficacy fails to do all the good expected from it, tells the practitioner to increase the dose, and to prescribe its more frequent repetition. If necessary to put down garotting, the judicious, as well as judicial, doctor will not shrink from the prescription of some thirty or more stripes, three times a year or so. The Home Secretary would do well to have the above, and every similar record, printed in the form of a bill to be extensively posted about the slums and elsewhere, for the edification of the ruffianly classes. The warning thus given them would tend to prevent the necessity of inflicting a painful and degrading punishment on our fellow-man.

While Commissioner Kerr's sentences upon those who assaulted women and children were usually severe, he nevertheless knew how to temper this severity with mercy when the circumstances of the case so required. In April, 1872, he passed a sentence upon a man who had ill-treated his wife which the newspaper critics considered to be too lenient. Numerous paragraphs about it appeared in the Press, and *Punch* had a cartoon representing two scoundrels comparing sentences in prison, which appeared to suggest that, in this century, a man usually gets a much lighter sentence for ill-treating his wife than he would for so treating any other woman.

The *Law Times* of April 20, 1872, remarked that "there must have been some good ground, . . . for the learned Commissioner is not a lenient judge." The *Law Magazine* for May, 1872, declared: "Nobody who knows the Commissioner would suspect him of undue leniency, or of any tendency to rose-water theories."

Both papers deprecated the fashion—now becoming again so prevalent—of "Trial by Newspaper."

The *Law Magazine* complained of "the ever-ready

Commissioner Kerr

assertion of a class of newspaper writers who are prepared, at a moment's notice, to write an authoritative comment upon the heaven or earth, or under the earth. Decency might suggest that a court, with all the facts of a case before it may have at least a chance of being right as these writers themselves, whose information is derived through reports obtained not seldom from the lower class of reporters."

Neither the devices of prisoners nor the comments of newspapers prevented Commissioner Kerr from passing the sentences he considered that justice demanded. In 1886 a prisoner named Clifton tried to impose on him by asking for an adjournment in order that his career as a "respectable accountant" might be inquired into. Mr. Commissioner Kerr at once ascertained that he was a wholesale swindler who was said to have committed many frauds. Then Clifton tried to frighten his Judge by telling him he was known to be the most severe on the Bench. Here, too, his cunning miscalculated. The Commissioner, neither deceived nor frightened, sentenced him to five years penal servitude!

No Judge, however, has ever sat long on the Bench and sentenced criminals without becoming the subject of a newspaper attack.

Just as Commissioner Kerr's sentence in the above case appeared too light in the judgment of the critics of the newspapers, so in another case they were said to be too heavy. On October 11, 1886, a letter in the *Daily Chronicle* from "A Solicitor" complained that the Commissioner had recently sentenced a "boy of 17" to five years penal servitude for "simple

Justice of Sentences by

larceny in stealing 3s. 6d. and a bag purse from Hannah Dunat Within." A few days later "A Middlesex Magistrate" wrote to that paper, pointing out that "the boy of 17" was of that age when first convicted in 1883; that the young hopeful had been convicted *five* times since then (*i.e.*, in three years), and had given one name on two of these occasions, and another on each of the other three!

Some offenders whom he had dealt with once gave singular evidence as to the justice, as a rule, of the Commissioner's sentences. From the *City Press* of August 7, 1901, we learn that the Commissioner held

a very high opinion of the valuable work done by Mr. Wheatley and the St. Giles Christian Mission in reclaiming criminals. On one occasion he was present at the thieves' annual supper, held in Little Wild Street. Twelve reformed criminals, who were sitting at a table, were asked by the Judge to say how many of them had been tried before him. It appeared that seven had "done time" as the result of the Commissioner's sentences. The seven were invited to hold up their hands, if they thought they had not deserved the punishment which was given to them, and not a hand was raised.

Moreover, in a well-known book called *Confessions of a Ticket-of-leave Man*, the writer, in Chapter XXIII., gives two instances which show that the Commissioner not only tried to make his sentences appropriate to the offence, but endeavoured to reclaim the offender, on at least one occasion with entire success. In the writer's own words:—

To show how easily young fellows are led astray, I will relate an instance of dishonesty which came under my notice in Wandsworth. A young man, who was the son of a gentleman who occupied a responsible position in a receiving office of a railway company in

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the City, had got into fast company, and especially that worst of bad company which is comprised of the fast publican and betting men element. He had been tempted by these persons to steal some of the parcels entrusted to his father for transmission to their proper destination, and had stolen a parcel of silk worth £100 and a box of tea. These goods he had taken to the publicans for disposal, and they had sold them, the thief receiving only a small portion of the proceeds.

That most just of Judges—and every occupant of Her Majesty's prisons knows how just he really is—Mr. Commissioner Kerr sentenced him to what was practically three months' imprisonment, a very light sentence considering the important nature of the theft. But the publicans got eighteen months apiece, which they well deserved. Speaking of Mr. Commissioner Kerr reminds me of another case. A junior clerk in the City, aged seventeen, curiously enough a teetotaler, had got into bad company, and forged a cheque for £8 belonging to his employers.

Mr. Commissioner Kerr took the case in hand, and referred the lad back to the House of Detention, where he was seen by the Chaplain, and by Mr. Wheatley, the Secretary of the Prisoners' Aid Society (a most excellent institution). These gentlemen reported favourably upon the case, and the Commissioner sentenced him to the nominal term of two days' imprisonment, and had him sent out to Canada, where he is doing well.

Mr. Commissioner Kerr is supposed to be hard, but it is only those who do not deserve good treatment to whom he is severe.

Parliament has only quite recently discussed the question of whether it cannot be arranged, that prisoners shall not in future go undefended for want of means, but that proper cases shall be investigated by a solicitor, and defended by junior members of the Bar. Great practical difficulties no doubt stand in the way of any such arrangement being made, especially as the guilt or innocence of a prisoner is determined in a much more satisfactory way by inquiries made previously to his trial into the cir-

On Poor Prisoners' Defences

cumstances surrounding the case, and the antecedents of the accused, than they are by any efforts, however excellent, made by Counsel in Court. The Bar Council had previously considered the matter. At one Sessions, viz., the Dorset, thanks to the efforts and ability of a well-known social reformer who is its leader, arrangements with the object described had then been already completed. But the Attorney-General, on being appealed to by the Circuit to stop the practice, declared it to be contrary to the usage of the English Bar.

It will not surprise those who know Commissioner Kerr, his intense love for justice, and his deep sympathy with those whom he thought oppressed, to read the following extract from a paper published over forty years ago, viz., on April 15, 1860 :—

Mr. Commissioner Kerr, at the last sitting of the Central Criminal Court, said he would be glad to see the younger members of the Bar defend all cases of the poor prisoners, which were undefended, and would afford all facilities in his power for the purpose. It was the custom of Scotland, where all criminal cases of poor persons were defended by the younger advocates free.

The methods of the Commissioner as the Judge in a Criminal Court naturally lent themselves easily to parody. Subjoined are one or two extracts from the comic press of the day, containing this :—

MR. COMMISSIONER KERR AT THE OLD BAILEY.

TIME : Generally a Tuesday, when it is seen that the work is too heavy for the other Judges. Mr. Commissioner Kerr is then sent for, and arrives hurriedly. Scarcely waiting to be ushered in by the sheriff in attendance, he dashes into Court, and begins the business.

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The Court is that known as the fourth Court, a little room just able to hold six barristers, six solicitors, the jury, the prisoner, the Judge, and his clerks, and three or four of the general public. Owing to the long list of cases there is usually before Mr. Kerr, there is a large quantity of what is professionally known as "soup" to be struggled for by the briefless among Counsel, the aforesaid "soup" consisting of briefs to be held for the Court in defended cases in which no Counsel have been instructed privately.

Mr. KERR : Seven defended cases. Here, Mr. Muddle ! (tosses the papers down to the clerk of the Court, who in turn passes them on to the thenceforward happy Mr. Muddle, who at once becomes the object of envy and hatred on the part of those remaining "soupless"). Fortunately, this will soon be arranged outside the Court, when the public prosecutor comes into office.

A Juror : My Lord, it is at great inconvenience I am summoned here to-day. I am the manager of a large daily paper, and I am given to understand that you would excuse my——

Mr. COMMISSIONER KERR : On the contrary, yer just the varamon I want. I wish they would summon all the managers of newspapers to serve on the jury. They would then see the necessity for a public prosecutor. Go on with the case (a prisoner having been put into the dock).

Mr. BRIEFLY (rising to address the learned Judge). May it please your lordship, in this case I have consulted with my learned friend on the other side, and we have arrived at the conclusion that, since the prisoner was committed for trial, evidence has turned up which puts a very different complexion on his conduct. I shall put that fresh evidence before your Lordship, and shall ask that the prosecutor be allowed to withdraw from the case.

Mr. COMMISSIONER KERR : Of course, I see through it all. The per—rosecutor has got his money back, and, no doubt, security for costs, so he wishes to withdraw. (To the jury generally, but to the newspaper juryman in particular.) You see, gentlemen, it is just as I thought. The vara first case illustrates what I was saying as to the crying necessity for a public per—rosecutor. Here's a man who, for his own private ends, chooses to put the cur—riminal law in motion, the country is put to a great expense, and we are brocht here to be made fools of. This could not be done in Scotland, gentlemen.

Mr. BRIEFLY : Perhaps, when the jury have heard the facts, they

Parody on Demeanour in Crown Court

will agree with me that it is fortunate for us all that we are not dispensing the Scotch law here at present.

MR. COMMISSIONER KERR : Of course, I am powerless in the matter. Proceed. (Looks up suddenly.) There is a great noise in Court. I suppose, it being a wet day, those gentlemen (pointing to two or three at the back of the Court) have found all the neighbouring public-houses full, and have come here to talk over business under shelter. By all means. Stop the business of the Court till they have finished. Thank you (the case is proceeded with for some little time). Tut! tut! tut! Who is that interrupting the Court now? Remove that person (some one talking to Mr. Briefly).

The Offender : I am the solicitor engaged in the case, my lord.

MR. COMMISSIONER KERR : I really can't help who you are. Remove him.

The Offender : But, my lord . . . (is pushed out of Court, and runs against a friend).

The Friend : What, turned out? Why, of course. Don't you see you've got a red necktie on? Here, change with me.

(The change is made, and the offender again enters Court without exciting Mr. Kerr's attention, the case having been disposed of according to Mr. Briefly's suggestion.)

The next case is called on. This is a case of robbery from the person of a very stout man. This is one of the "soup" cases so liberally bestowed on Mr. Muddle, each of which is worth to that favourite of his lordship, from one to three guineas of public money. The first witness, the prosecutor himself has just been examined in chief.

MR. COMMISSIONER KERR : And you mean to say that you walked about with your coat unbuttoned, with that watch chain protrudingly displayed upon your stomach? Och! Och! It's sad to think that, to feed his vanity, this man has probably led an innocent, ignorant fellow-creature into crime, and put the State to an expense of £30 (pushes away his table in disgust). Who defends in this case?

MR. SMALLWEED (speaking from the attorney's box, not having been able to find a seat among the six open to Barristers) : I do, my lord.

MR. COMMISSIONER KERR : Then pray step into the place allotted for Counsel. I cannot hear you from that bench.

MR. SMALLWEED ; Certainly, my lord. (Aside to brother Barristers.)

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Make room for me, will you? (Lifts his gown and climbs over the partition into the regulation seat.)

Mr. COMMISSIONER KERR (looking up surprised, and not to say indignant). Och! Och! Tut! Tut! I cannot have Counsel hopping about my Court like a lot of ballet girls. But there; go on with the case. (Resumes his ordinary position at his desk, and the case goes on. The time for the Judge's summing up is ultimately reached.)

Mr. COMMISSIONER KERR: Gentlemen, you have heard the evidence in this case, use your intelligence and find your verdict. (The prisoner is found guilty.)

Mr. SMALLWEED: In mitigation of sentence, my lord, may I urge that the prisoner has a wife and two children dependent upon him.

Mr. COMMISSIONER KERR: Rubbish! Of course you have been instructed to put that forward, but let me tell you that, to my mind, that is the most damaging part of the whole case. He ocht to have thoct of them before entering on a career of crime. He must be imprisoned with hard labour for two years. At the same time, I shall mark my sense of the prosecutor's conduct in walking about the streets, offensively exhibiting on his stomach a temptation to the needy, in the shape of a gold chain, by disallowing him his costs. Such ostentatious display of wealth should be put down by a strong hand.

The following is one of the "Sketches in Court" (No. III.) published by the *World*. It appeared in the issue of that paper for August 21, 1878.

COR. MR. COMMISSIONER KERR.

Mr. PERCY BENT: Will your lordship allow me——

Mr. COMMISSIONER: Sh! Sh! Mr. Bent! Aw 'm afreed we're interruptin' the conversection of these gentlemen (pointing to some of the Bar), an Aw 'm sure ye're too polite to wish to continue after the fawct has been pointed out to ye. Silence having been restored——

Mr. PERCY BENT: Will your lordship allow me to mention the case of the "Queen v. Robinson," which stands first on your lordship's list for to-day. I am instructed for the prosecution, together with my learned friend Mr. Capulet Wilson. Unfortunately, Mr.

Parody on Demeanour in Crown Court

Wilson is just now engaged in another Court, but if your lordship would take another——

Mr. COMMISSIONER : Ye want the case postponed !

Mr. PERCY BENT : That is the application which I have to make. I am, of course, entirely in your lordship's hands.

Mr. COMMISSIONER : In my hands, Mr. Bent ! It's the Court that is entirely in the hands of the Bar, and will be sae, I suppose, until the legislature appoint a public prausekeetor.

Mr. PERCY BENT : Until that much to be desired event takes place, my lord, Counsel, as your lordship sees, find it somewhat difficult to be in two places at the same time, and I trust that you will accede to my application.

Mr. COMMISSIONER : Of coorse, of coorse, Mr. Bent. It's quite sufficeient reason, apparently, for its postponement that a ceese stands fairst on the list. Meanwhile is thar any ceese ready to be tried ? If sae, in the name of gudeness let's hev it !

Robert Sykes is here put into the dock, and charged with stealing the sum of two shillings from the prosecutor, John Williams.

Counsel for the prosecution having opened the case :

John Williams is sworn and deposes : At twelve o'clock on the night of June 29th, I saw the prisoner at the Red Cow public-house in Seven Dials, and——

Mr. COMMISSIONER : Let me ask ye, Mr. Williams, were ye dressed in the same manner as ye are now ?

J. W. : Yes, my lord.

Mr. COMMISSIONER : What ! Wi' that gold chain on your neck, and those fine rings on your fingers.

J. W. : Yes, my lord.

Mr. COMMISSIONER : If piple are jest inseen enough to walk about in sech a place, at sech an hour, bedizened wi' joolry, and hanged about wi' goold chains, they can't be surprised if they are robbed. At any rate I'm not. Well, what about the two shillings ?

J. W. : Well, my lord, I took two shillings out of my pocket, and put it upon the counter, and when my back was turned——

Mr. COMMISSIONER : Exactly ! I suppose the two shillings were gone ? What else, man, did ye expect ? And how do ye know the prisoner took them ?

J. W. : He was close beside me at the time, my lord.

Mr. COMMISSIONER : And was there nobody else beside ye ?

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J. W. : There were other people in the place at the time my lord, but the prisoner was the one nearest.

Mr. COMMISSIONER (to Counsel for the prosecution) : Have ye any more witnesses, Mr. Smith? If sae, call them.

Mr. SMITH (Counsel for the prosecution) : Only the policeman who took the prisoner into custody, my lord.

Mr. COMMISSIONER : Call him, call him.

Police Constable sworn, and deposes to having taken the prisoner into custody, and found two shillings on his person.

Mr. COMMISSIONER (to Mr. Jones, Counsel for the defence) : I suppose ye'll be requiring to make a speech. Since the passing of that ineequitos Awct—Denman's Awct—Judges are bound to groan under the inflection of five speeches instead of three.

Mr. Jones addresses the jury for the defence, during the delivery of which Mr. Commissioner raps impatiently upon the desk before him with his pencil, dashes his handkerchief into either eye, and is heard to utter broken ejaculations having reference to Denman's Act, and a public prosecutor. At its conclusion—

Mr. COMMISSIONER (to jury) : It's for you to say, gentlemen, whether ye can attach any credence to the statement of a man confessedly so inseen as the prausekeetor, a man who walks about Seven Dials at twal' o'clock at night, hung in joolry, and sech like. If ye do believe him, ye'll find the prisoner guilty; if not, ye'll just acqueet him.

The jury return a verdict of "Not guilty."

Mr. COMMISSIONER : The preesner's discharged. Whar's the prausekeetor? (Prosecutor presents himself.) Ye'll just understand that I'm not going to allow ye your expenses for coming here. It will be some satisfaction, however, for ye to refleck that this two shilling job of yours has cost the country more than all the taxes ye ever paid, or are likely to pay, if ye live to the age of Methoosela.

A St. Pancras local paper, under the heading of "Do you know them?" gave "A series of Word Sketches in which we try to portray the men we meet with in life." Evidently the writer of the sub-joined article well knew Commissioner Kerr, who had until the previous year been for four years Chairman

General Aspect of Character as Judge

of the St. Pancras Board of Guardians.¹ In the *Guardian and Reporter* for March 6, 1886, appeared one of the above sketches—No. IV. :—

DUGUID JOCARR, ESQ.

Age, about 60 ; height, somewhere between 5 feet 6 and 6 feet ; weight, about 13 stone ; dress varies much, almost impossible to describe, but usually a somewhat seedy cutaway black coat, with similar unmentionables, an old-fashioned, high-cut, rounded-end collar, and no display of jewellery ; manner (depending entirely upon where or how engaged), equally difficult to portray ; lineage, from the "North countrie," and there it goes back to the forty-second or third generation—even the G. O. M. claims some of the blood, and many others too—when it suits their purpose.

To say that the subject of our sketch is an ill-abused man, would not be strictly accurate, neither would it be right to say that he is well abused ; but that he often calls for condemnation from his dogmatic utterances, we have no manner of doubt. As a "King of his own castle" he uses his power sometimes indiscreetly, often wisely, and occasionally ridiculously. "Don't talk to me of the law ! I can tell ye my little finger kens mair about it than half the folk who come here to tell it me." His great forte however is his common sense (we once heard a man—not a fool either—say he was glad it was not common). Very many years ago a "puir body" said that he had sent a lot of material to be manufactured, and, being a large order for him, he wanted some of the goods before the bulk was delivered. That first delivery was satisfactory, but when the bulk was sent in it was not only badly done, but the material was spoiled. Whereupon our good friend, the subject of our sketch, said somewhat roughly, "Ye hae broken bulk, ye maun pay." The "puir body" tried to remonstrate, and did succeed in getting out the words, "If ye were to order a suit of cloes, and ye wanted the breeks first badly, and ye had them sent home, and thae fitted a' richt, would ye be compelled to keep the waistcoat and coat, if they didn't fit, when thae cum home, and yere ain claiht too?" The response was, "I tell ye ye've broken bulk, and ye maun pay."

¹ As to this see *post*, Chap. IX. at pp. 279 *et seq.*

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The next case." And what is more, the "puir body" did pay. He afterwards took legal advice, sued the man that had spoiled his material, but, before the second trial came on, this man became bankrupt. So, through no fault of his own, the "puir body" had to pay for his whistle very dearly.

It's a dark cloud that has not a silver lining. A "lang time syne," we had to act as a juryman at a Criminal Court, and then our sketch was differently attired, both in dignity and demeanour. In this instance he behaved with all the solemnity appertaining to an "English Judge of high degree." An old man had been brought before him for embezzlement: the facts were clear against him, but it came out that the poor man, for the sake of keeping up a false appearance for himself and his family, had used the embezzled monies to contribute to the building fund of a church in the district in which he resided. His employers, his minister, his friends, all pleaded for a lenient sentence, and the Judge, with "words of admonition due," took the pleadings to heart. With tears in his eyes, the writer's, and almost all in Court, he sentenced the poor wretch to the lightest sentence the law allowed. "One touch of nature makes the whole world kin," and this one touch raised our subject far higher, in our estimation, than all the other stories about him have a tendency to lower.

Another position in life to see him in (and which perhaps is the more natural one) is when he fulfils a citizen's part, from the elevation "to which God has been pleased to place him"—as a J.P. He was qualified to preside for some time over the deliberations of a somewhat obstreperous "Board." Although he was often bored there, he managed to give much satisfaction to all the unbiassed members of that august assemblage. Times, alas! are changed, law gives place to Church,¹ and Church takes care to air his knowledge of chairman's law as freely as our sketch aired his.

After all, it's hard to say how most of us would act, had we two or three thousand a year "certain." For life we might do better (?), *but* (and here be it noted seriously) "we micht due waur."

¹ The Commissioner was succeeded by a clergyman in the Chairmanship of the Board of Guardians. See *post*, Chap. IX at p. 286.

CHAPTER VIII.

THE PART PLAYED BY THE COMMISSIONER IN PASSING POLITICS, AND POLITICAL VIEWS HELD BY HIM.

THE Judges of the City of London Court, as it is now styled, and of the old Sheriff's Court on which it is founded, always possessed, and still enjoy, the now unique privilege of being able to sit in Parliament. Their office is held under, and paid by, the City of London. Consequently, though a presentation by the Crown of that office to an M.P., vacates the seat in Parliament held by the presentee, he is, even now, eligible to still sit in Parliament if re-elected thereto.

Commissioner Kerr, having been appointed to his office by the Corporation of London, was clearly at all times eligible to sit in Parliament, could he have obtained a seat there.

That he never did so was not due to any lack of effort on his part. In the twenty-one years which immediately followed his appointment to the Judgeship of the City Court, Commissioner Kerr made no less than six different efforts to obtain a Parliamentary seat—first at Wolverhampton, and subsequently, after short intervening intervals, three such attempts at

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Shrewsbury, and one again each at Peterborough and at the Kilmarnock Boroughs.

In the early summer of 1861, it was rumoured that Sir Richard Bethell, who will be recollected to have been amongst those who gave testimonials to Mr. Kerr, was about to be made Lord Chancellor. His appointment would create a vacancy in the Parliamentary representation of Wolverhampton, for which he was then M.P. The Commissioner aspired to fill the vacancy when it arose. He, accordingly, went down to Wolverhampton, did a couple of days' canvassing, and then placed himself in the hands of the local Liberal party, whom he found "had always acted together." For, as he said, "I would be the last person to create any division in their ranks." There was need for the Liberal party to unite. The Government desired the seat for Mr. Roundell Palmer, but to many of the electors "the Tory and Puseyite Q.C.," as he was locally described, was distasteful. Several well-known Liberals were seeking the seat; and there was a danger that the Liberal divisions would let it fall into Tory hands. Mr. Kerr, under these circumstances, was loyal to his party. Their choice fell upon Mr. Weguellin—a former governor of the Bank of England. Mr. Kerr at once acquiesced when he found that, to use his own words, "The choice has fallen upon another," and on June 27, 1861, issued a graceful address withdrawing from the contest. In it he explained what had happened; said that he was "a thoroughly independent candidate, the nominee of no party, and not pledged to vote with any government"; and explained his

General Political Views

general political views in the following interesting words :—

I would, if elected, have given a steady and consistent vote in favour of every measure, whether originated by the Government or not, which met with the general acceptance of Reformers. I would abolish Church rates, extend the suffrage so far as is necessary to enfranchise every man of sufficient intelligence to give an honest vote, and protect the elector by ballot. I would remove every impediment to the extension of trade and commerce ; cut down the expenditure of the country to the lowest sum consistent with efficiency, and still further simplify and cheapen the administration of justice.

Four years later, viz., in July, 1865, the Commissioner again endeavoured to get himself selected as the candidate of his party for a Borough seat. Unfortunately no better success attended his effort than that at Wolverhampton. Shrewsbury at that time possessed two M.P.'s. One of these, a certain Mr. Tomline, not content with reluctantly voting against his party only when some exceptional and grave occasion required him to exercise an independent judgment, and conscience told him that loyalty to his party would make him a traitor to his country, habitually so voted, wherever he got the chance, and did so on comparatively minor matters of no national importance. A Mr. Clements came out to oppose him. This gentleman appears to have been hardly more to the taste of some of the tradesmen of the town than the Liberal who, anticipating the "Liberal Unionist" of the then future, habitually voted servilely with the Conservatives. So the local Liberals sought about for another candidate ; found one in the person of Mr.

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Commissioner Kerr; and on the eve of the election, brought him up from St. Leonards-on-Sea, where he was recruiting his energies in the breezy sea air, to the town of Shrewsbury. Mr. Clements, so soon as the Commissioner's address appeared, announced his intention of at once retiring. The Commissioner on discovering this, adopted the same course as he had previously taken at Wolverhampton, and attended a party meeting to consider what should be done. The meeting decided that it was undesirable to now (six days only before the election) put forward another Liberal candidate. The Commissioner at once withdrew. To use the words of a local Liberal paper (*Shrewsbury Observer* of July 8, 1865), "That gentleman, whose public conduct throughout the transaction has been most straightforward and gentlemanly, and who has been more sinned against than sinning, immediately said that it was far from his desire to cause a useless contest, and, as it did not appear to be the wish of the meeting that he should stand, he at once withdrew." So ended the first chapter of the Shrewsbury episode in 1865, in which, to adopt the language of the Liberal organ which has been quoted from, "Mr. Kerr showed himself worthy of a better fortune."

In 1866 Mr. Tomline, who had been again returned, pursued his old ways of "gaining his election through the exertions of Liberals, and, on all occasions when questions of great importance are at issue, going into the Lobby with the Tories." Mr. Kerr was again communicated with, a defeat of the Government having made it probable that there would soon be

Shrewsbury "Sell"—Peterborough fiasco

a general election. In 1868 an arrangement was made by which Alderman Figgins, an avowed Tory, superseded the sham Liberal, Mr. Tomline. Up to that date, Shrewsbury had for many years been a stronghold of Liberalism, but it is apparent that the local Liberals there preferred a real Tory to a sham Liberal. Mr. Kerr came down to Shrewsbury, but was induced to assent to the arrangement, and to abstain from coming out as a candidate, by a promise of undivided support from the party whenever fitting opportunity allowed. No further election, however, took place till 1870. When it did come, the Commissioner went down again to Shrewsbury, expecting the fulfilment of the pledge given to him by the Liberals of Shrewsbury in 1868, that he should be the adopted candidate of the party when fitting opportunity arose. "Mr. Kerr's claim was pooh-poohed," says the local Liberal journal, the "moral screw" being put on in favour of "a namby-pamby named Cotes, whose only claim upon the electors was that he was the son of his father." The Conservatives gained the second seat on the occasion of this contest, Mr. Douglas Straight (now Sir Douglas Straight, an ex-Indian judge, who has since become, and now is, the editor of the *Pall Mall Gazette*) being returned as the colleague of Alderman Figgins by a majority of thirty-eight over the "namby-pamby young gentleman."

Four years again elapsed, and then, in 1874, the Commissioner became, together with numerous other Liberals, a candidate for the borough of Peterborough. On this occasion he went to the poll, but was totally unsuccessful, as he did not even get a position on the

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poll which gave hopes for better success on a future occasion. Truth to tell, he found himself hopelessly left so low upon it that he quitted Peterborough for ever!

The interval between the Peterborough election, with its ignominious defeat, and another attempt to enter Parliament was only three years. Mr. Fortescue-Harrison had got himself returned for the Kilmarnock Boroughs on the distinct promise to the Irish electors there to vote for "Home Rule." So, at any rate, declared Mr. Biggar, the then manager of the Irish Parliamentary Party. But Mr. Fortescue-Harrison declined so to vote. Now the Irish electors are said to be a very important body in the Kilmarnock Boroughs. The sitting M.P.'s alleged "treachery to Home Rule," and other reasons also, rendered a considerable portion of the electors discontented with that Parliamentary representative. Mr. Commissioner Kerr's friends in the Boroughs communicated with him, and he doubtless considered the question of contesting the Boroughs with a favourable inclination to so doing. On December 20, 1877, as the result of a dark statement in *The World* newspaper hinting that "a Scottish Barrister" would, at the proper time, be found to contest the seat, and in consequence of the Commissioner having then lately addressed a meeting of the Catholic electors at Dumbarton, practically on the question of religious equality, *Lloyd's Weekly News* published an article on the subject of his supposed candidature. In this article Commissioner Kerr was violently attacked as about to stand for the Kilmarnock Boroughs "as the

Contest at Kilmarnock Boroughs

protégé of Messrs. Biggar, Parnell, and Co., as a Home Ruler, and as a Tory." But in his address to the Catholic electors the Commissioner had previously rather gone out of his way to express his dislike to Home Rule. In reply to the article he addressed a letter to the *Dumbarton Herald*, again emphatically expressing his dislike to that scheme.

About six months later, viz., on July 26, 1878, he issued an address to the electors of the Boroughs, formally announcing his intention to stand as a candidate for their Parliamentary representation when opportunity should offer. In the December following (1878) he issued a lengthy address. The most interesting portions of this (omitting passing or merely local subjects) are as follow :—

In home politics the leading questions will be, I anticipate, the County Franchise ; and in Scotland, at least, the Disestablishment of the Church.

I do not see how the extension of Household Suffrage to the Counties can be refused or opposed by those who granted it to the Burghs ; but if effected by that party, it may be neutralised by some kind of redistribution of the seats. This is what, it appears to me, the Liberal party have to watch. As I regard our Municipalities, which were the nurseries, to be still the depositories, of our Civil and Religious liberties, I desire carefully to preserve and maintain the Parliamentary as well as the Municipal privileges of the Burghs.

The Disestablishment of the Church of England seems to be the only remedy for the evils which afflict it. But with regard to the Church of Scotland the case is entirely different. I think it at present not only impolitic, but unjust to those who are still without votes, to make the question a test. It is for Scotland peculiarly a national question ; and until the suffrage has been extended in the Counties the national will cannot be truly ascertained. When the people pronounce for it, Disestablishment shall have my support. We need no extraneous assistance. Scotchmen have been trained

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by three centuries of ecclesiastical discussion to deal with the question in a manner consistent with their past history and their highest inspirations.

In the Permissive Bill and in Home Rule many of the electors take a deep and conscientious interest. Let me say at once that I am not in favour of either.

No one is more sensible of the evils of intemperance than I am ; but the Permissive Bill is not to my mind a practical remedy. I will gladly welcome any proposal to lessen the evil I refer to, and if the transfer of the powers of the Magistrates to Local Boards, elected by and responsible to the ratepayers, is thought to be desirable, I should gladly assist in effecting the change.

To Home Rule again, as meaning a Parliament in Dublin for Irish, or in Edinburgh for Scottish affairs, I cannot agree. Government by the people and for the people is a Liberal axiom applicable to local as well as Imperial affairs ; and the principle of representative county boards having been agreed to by Parliament, their creation for the whole United Kingdom is, I hope, not far distant. I am prepared to assimilate the Irish franchise to that of England ; still further to extend the principle of Mr. Bright's Act ; and generally to place Ireland on the same footing in all respects as the other parts of the United Kingdom.

These questions are all taken up by different sections of the community ; but one remains which affects us all, Taxation. The surplus left by the late Liberal Government has not only disappeared, but our expenditure has been, and is being, greatly increased by what is called our Imperial Policy. Retrenchment is the professed duty of the Liberal party, and I believe that our National Expenditure can be considerably reduced without any risk to the efficiency of the public services. This, indeed, has become a necessity if we are ever again to compete with other nations, either in our commerce or our manufactures.

As on more than one former occasion, Mr. Commissioner Kerr was not allowed the privilege of a single-handed, stand-up fight against the Liberal of doubtful fidelity to his party, whom he had come down to oppose, nor with a Tory. A Mr. Dick

Probable Political Failure

Peddie, an architect, of Edinburgh, and a leading U.P. elder, came into the field not long subsequently to the Commissioner taking it. Soon, as the Provost of Kilmarnock, Provost Sturrock, told the electors at a public meeting held there on January 15, 1880, the electors of the Boroughs were, "happily or unhappily" for themselves, "in the position of having some four or five candidates all wooing." Under these circumstances, the Commissioner's candidature for the Kilmarnock Boroughs was as unsuccessful as his candidature at Peterborough had been, and the result of a poll of the electors was for him another—and as it proved a final—defeat of his attempt to enter Parliament.

The return of the Commissioner to Parliament in 1880 would probably not have been of much benefit to either him or the country. Had he, indeed, succeeded in earlier days in obtaining a seat in Parliament he would unquestionably have done much good public work, and introduced many valuable social reforms. In those days, public services were even considered to confer some claim to promotion to the Judicial Bench. Even without a seat in Parliament, Mr. Commissioner Kerr was often spoken of, at moments when his brother Scotchman, the late Mr. Justice Blackburn, was attracting the public notice as a great lawyer and an excellent Judge, as likely to receive promotion to the Bench of a Supreme Court. But during the last thirty years Parliament has been almost exclusively occupied with party questions and with Imperial politics, and consequently has found little time to discuss any minor measures of social reform for the

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improvement of the condition of the people. In purely party politics, Commissioner Kerr would probably not have been a success. This he, indeed, well knew, he often having remarked, "You and I are no good at party politics, Pitt. Lord Melbourne once, when pressed to give an appointment to a man because he was a good fellow, 'and always votes with us when he thinks we are right,' said, 'D—— him, what's the good of *that*? I want a fellow *who will support me when I am* WRONG.'"

The Commissioner's intense love of justice would have led him, had he been returned to the House of Commons, to have habitually committed the unpardonable political sin of always thinking for himself, and sometimes voting as dictated by his conscience, not his party. Guided by this he would, like the writer, have found himself unable to follow his party in 1885, since during the contest at the Kilmarnock Boroughs in 1880 he had expressed himself in terms almost absolutely identical with those employed five years later by the present writer, and to them the Commissioner would doubtless have adhered. To use his own words, he had said: "I am opposed to what the Irish call Home Rule—a Parliament in Dublin. . . . I would extend to Irishmen every possible institution for local self-government that we have in England. But I will not consent to break up the nation by having a Parliament in Dublin." Although, too, he could claim to be "born a Liberal, bred a Liberal, and a Liberal all my life," he was, on the one hand, opposed to the Permissive Bill, and, on the other, a churchman

Views Decided and Independent

who claimed for the Church to be disestablished, and thus freed from secular control. Commissioner Kerr's political career, had he succeeded in entering Parliament, would, probably, have been like the writer's, dismal and disastrous, seeing the almost absolute identity of his views with the latter's, and the tenacity with which he ever clung to what he deemed to be justice and right. But in the words of Lord Melbourne, which he was so fond of quoting, with only a little alteration, it may be asked of such views, "What's the good of them? We want men who will support us when we are **WRONG**."

CHAPTER IX.

THE PART IN PUBLIC LIFE TAKEN BY THE COMMISSIONER AS CHAIRMAN OF A METROPOLITAN BOARD OF GUARDIANS.

THE Commissioner, off the Bench and in public life, endeavoured to continue the work of "cleansing Augean stables" which was his mission in his Court. With this view he endeavoured on no less than half a dozen occasions to obtain a seat in the House of Commons. He afterwards, in order to effect a much-needed improvement, and to remedy the scandalous state of affairs which had grown into existence at the St. Pancras Board of Guardians, came forward and allowed himself, as a magistrate, and thus an *ex officio* Guardian, to be elected chairman of that body. The Commissioner's endeavours to obtain a seat in Parliament, and his action in bringing about a reform at the St. Pancras Board of Guardians, are the two best-known acts of his public life off the Bench.

After his defeat in the Kilmarnock Boroughs in 1880 had brought the Commissioner's political aspirations to an end, he determined to devote some of his energies to the public service in municipal matters,

Abuses Existing in St. Pancras

and to set to work to cleanse an Augean stable which he found near to his own door.

He resided in Chester Terrace, Regent's Park. A sad state of affairs at this time existed at the Board of Guardians for St. Pancras with regard to everything under the control of that body. Abuses of every kind were rife. The workhouse, for instance, built to accommodate about 1,450, was made to do duty for 2,000 paupers, its scant accomodation being supplemented by a profusion in granting "outdoor relief" on a lavish scale, with all the consequent abuses which experience has shown to be attendant upon the system. The course thus taken with regard to the workhouse was supposed to be that of "Economy," and an "economical," or, to say the truth, a niggardly and cheese-paring policy of stinginess, miscalled "Economy," but really most extravagant, dictated the policy of the Board of Guardians as to the pauper schools, the infirmary, and every other institution over which its control extended.

The Commissioner was one of the earliest to adopt the now popular view that women members can effect much good on a Board of Guardians or in the management of schools. Accordingly, in 1881, he allied himself with a party of lady reformers in the parish of St. Pancras.

Foremost amongst those taking part in the "great stir" made in St. Pancras on the election of a new Board of Guardians in 1881 were Commissioner Kerr and a daughter of that friend of his youth, the philanthropist and reformer, Matthew Davenport-Hill. Their efforts were so far successful that at the election

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in April, 1881, the new candidates obtained twelve seats out of the eighteen to be filled, and only six members of the former Board retained places on it. Innumerable were the letters and messages of congratulation received by the Commissioner. On the occasion of the first meeting of the new Board it was declared publicly that the great change which had taken place in the Board's constitution was mainly due to the Commissioner and accordingly, he being, as a magistrate, already an *ex officio* member of the Board, was on that occasion (April, 1881) elected its chairman with but one dissident. In returning thanks for his election the new Chairman for the moment assumed that the new Board had knowledge of the principles of Poor Law Administration, and added—

But with such knowledge it is only when principles come to be applied in practice that difficulties of no simple character present themselves. The solution of these difficulties is not facilitated by the consideration of late years of the soundness of many of the rules relating to the relief of the poor. The proper administration of outdoor relief is one of many pressing questions. In some unions it has been reduced to a *minimum*, greatly, it is said, to the advantage not only of the ratepayers but, really and morally, to the class from whom those who require outdoor relief generally come. Loans instead of doles have in many cases been found the most beneficial mode of assisting struggling industry, and in preserving the self-respect of the working classes while suffering under temporary difficulty, whether arising from illness in the family or depression of trade, or in consequence of loss of occupation. I venture to think that the preservation of the home, with all its attractions, however humble and unpretending, ought always to be in the consideration of those charged with the administration of outdoor relief. The mode in which outdoor relief—properly so-called—is given is also of great importance, viz., whether it should be in money or kind.

Becomes Chairman of Board of Guardians

This has been a question of earnest consideration. In some parishes relief in kind has been entirely abandoned, and it is, I think, clear that if this giving of outdoor relief could be limited to persons of really good character—that is to say if character can be added as a test of respect—then the best form of relief would unquestionably be money. As this point, and many others, must come before you for discussion, pray understand that I am not at present offering any opinion. I am only asking for the new Guardians that consideration from their constituents to which I think the difficulties before them fully entitle them. It is stated and believed that in the workhouse itself there are paupers who ought not to be there at all; that there are some persons receiving outdoor relief who have no right or valid claim to be on the rates. These reports, whether true or not, call for the most vigilant examination of the respective lists of outdoor poor by the respective committees entrusted with the enquiry. The ratepayers are not only entitled to accurate information, but it is obvious that to a certain extent this important question will at once occupy the Board in a full committee. The question of the workhouse accommodation must to a great degree depend on what is required to be provided for the permanent indoor poor. Incidental to this question is another, viz., a careful consideration whether some of the children, orphans for instance, might not be usefully and beneficially boarded out, always, of course, under the superintendence and inspection of the Guardians. Instead of being retained either in the house or in the schools, many benevolent ladies in different parts of the country are willing to undertake the overlooking of children thus entrusted to families in their neighbourhood, and many respectable married couples either without children or with few children find a child so boarded with them not only a great help as regards the money payments, but often a great comfort in their homes.

The result of the elections in St. Pancras in 1881 was not merely to place Mr. Commissioner Kerr in the chair of the Board, it was the inauguration of a new policy at this important Board. What followed may be best shortly described in the words of the *Lady* newspaper, in a notice of the work of Miss

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Ledgett, contained in an article in that newspaper on March 27, 1902 :—

A great stir was made for new blood on the Board of Guardians, and among those freshly elected were some very earnest-minded men and women who had no axes of their own to grind. The names of Constance Marchioness of Lothian, Miss Florence M. Davenport-Hill, Miss Lidgett, and Miss Andrews, now Mrs. Heberden, were sufficient guarantees of disinterestedness, and the new chairman was Mr. Commissioner Kerr. Everything had to be recognised ; the long-talked-of new workhouse accommodation had to be taken in hand, and the ladies, with their masculine colleagues, felt their work discouraged by the fact that their elections might all have to be fought over again at the end of the year, before they had had time to prove the wisdom and reasonableness of any course they might decide upon. It would have appeared so much more economical to some ratepayers, especially to those who were owners of tenement houses, if the large outdoor relief had been continued instead of the "ratepayers' money being squandered" on new buildings. But the requirements of the Local Government Board were inexorable, and it was impossible to squeeze 2,000 inmates decently into space that was only certified for 1,450. Sanitary and other arrangements deemed adequate in 1809 were impossible seventy years later.

The sort of Chairman of a public meeting that the Commissioner made, and his methods of conducting public business, were about this period admirably described by a writer in the *City Press*, who had obviously attended a public meeting over which the Commissioner presided, in order to see how he did his work as Chairman of a public body. This was thus described in an article which appeared in the *City Press* of November 18, 1882 :—

The Judge of the City of London Court makes an inimitable chairman. Acting in that capacity at a School Board meeting in

Work as Chairman of Guardians

St. Pancras on Friday night, Mr. Kerr was seen at his best. Calling upon Mrs. Westlake to speak last of the four candidates, the Commissioner said he had had no hand in that ungallant arrangement. The lady's three colleagues had entered into some sort of unholy alliance, and were probably afraid that if Mrs. Westlake spoke first she would so interest the audience as to take all the gilt off the gingerbread. And when the "heckling" commenced, and the solicitor's salary and commission were warmly assailed, what a laugh the Judge caused by confessing that he saw a great many legal bills, and they were not pleasant reading. His humorous mode of declaring "who caught my eye first, as they say in the House of Commons," when half a dozen gentlemen were on their legs together, also did not a little to obviate confusion, as did also "The gentleman with the hat first, if you please"; "Now the gentleman without the hat"; "This gentleman rather takes the precedence, he's somewhat the taller of the two." "All experience is against that," was the decision of the Judge, when a chorus of "No, No's" told a "heckler" that he had wrongly interpreted a reply. And when one insisted that he should be informed offhand why there were so many juvenile thieves in a certain district, a roar went up as the Commissioner, ruling the query not germane to the subject, replied that the querist "had better go round to Scotland Yard." The evidence of official documents, too, not meeting with favour, the Commissioner was equal to the situation by observing that "I am afraid St. Pancras does not think much of Blue Books." Altogether, Mr. Kerr gave his judgments with a terse tact, just suited to an assembly not by any means of one mind; as was testified by "A good job too!" and loud cheers and counter cheers, following an avowal that the Board have no power to establish free schools; and chairmen designate for the first time might learn a useful wrinkle by studying the conduct of the Judge of the City of London Court when acting as an unprofessional president.

Two years later, viz., in 1883, another election of Guardians took place and the Commissioner was again elected chairman of the new Board. But on this occasion there was a real contest for the position. On a division there were sixteen votes for the Commissioner and five votes for a local man who was his

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opponent, thus leaving the Commissioner a majority of eleven. The result of the election was thought to be due on this occasion to the personal qualifications of the Commissioner for the office rather than to the predominance of the opinions of the reforming party on the Board with whom he was in sympathy. For a writer, obviously well acquainted with local politics at the time, remarked in the *City Press* of May 2, 1883, as follows :—

There is no doubt that the learned Commissioner forms an admirable president, and possesses the rare gift of infusing interest into the whole proceedings, whatever the nature of the assembly may be ; and I can well imagine that some of the Guardians who voted for the re-election of the vivacious and humorously dogmatic Judge of the City of London Court did so under a feeling that it was safer policy to make sure of flashes of sunshine, and electric enliveners, combined with genius from the chair, than to elevate some one who might, perhaps, prove equally dull as dignified, and a pre-eminently respectable wet blanket.

While no memoirs of Commissioner Kerr could claim to be complete if they omitted all mention of the valuable local work done by him in assisting the proper administration of the Poor Law in his neighbourhood between 1881 and 1885, the parish politics of Saint Pancras are not a subject which it would interest the general reader to discuss in detail. Suffice it to say that the party with which he sympathised succeeded during his chairmanship in effecting many reforms and in doing much good. Especial praise for the share which they took in this work is due to the ladies who, with the Commissioner, interested themselves in bringing about a better state

St. Pancras Reforms during Chairmanship

of matters at the St. Pancras Board of Guardians and in the Institutions—principally the workhouse, the infirmary, and the schools—which were under its immediate control. A new workhouse was erected, and reforms and improvements effected at the infirmary and at the schools. The comforts of the inmates at the one, and the child-life and education at the other, were seen into and made better, and much good effected. Speaking generally, it may be said that the reforms in Poor Law Administration spoken of in Commissioner Kerr's inaugural address as Chairman were all duly effected during his tenure of the chair of the Board of Guardians.

In the interval between 1883-5 two misfortunes overtook the late Commissioner. He himself had a very severe and serious illness in the spring of 1884. At one time this was, indeed, of so serious a character that his many friends despaired of ever again seeing him amongst them. Through this he was affectionately nursed by his devoted wife. Hardly had he recovered from the visitation of sickness when a heavy calamity indeed fell upon him by the sudden death on May 19, 1884, of Mrs. Kerr, whose life, it can hardly be doubted, had been shortened by the cares and anxieties which she had undergone during her husband's recent illness.

In this grief and affliction he received the sympathy of his neighbours—friends and opponents alike. The Board of Guardians unanimously passed a resolution (May 29, 1884) recording their "sincere sorrow" at "the great loss which has been sustained by him through the death of his wife," and their trust, while

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conveying to him this expression of the Board's sympathy, that he might himself soon be able to resume the duties of his important office.

At the election of Guardians in 1885 a considerable change again took place in the constitution of the St. Pancras Board of Guardians. At the first meeting of the new Board it was moved and carried that its chairman ought to be an elected and not an *ex officio* Guardian. This was a not ungraceful way of conveying to the Commissioner that the new Board did not desire his services as chairman. Accepting this, the Commissioner did not allow himself to be again put in nomination for the chairmanship.

For a few years afterwards he continued to sometimes attend the meetings of the Board of Guardians. But the intervals at which he did so became naturally longer and more irregular, till he at last, in 1899, left Chester Terrace, where he had hitherto lived, and took up his residence at a small house at Northwood. His medical advisers had told him that he ought to be out of London as much as possible, and that it was above all things, of great importance to him to always sleep in the fresh air of the country.

Meanwhile his services in St. Pancras were not forgotten. In October, 1888, he was formally invited by its Executive to become the adopted candidate of the Liberal party in the borough to represent it on the County Council. But he with thanks declined the honour thus offered for his acceptance.

CHAPTER X.

THE COMMISSIONER'S PRIVATE LIFE, INTERESTS, ASSOCIATIONS AND PURSUITS.

WHEN off the Bench and in private life, the Commissioner still had some personal interests closely connected with the law; and not a few altogether apart from it.

In connection with the profession, he took a great interest in the establishment of "Courts of Conciliation," as suggested by Lord Brougham. His intimacy with that great man had, no doubt, been originally brought about through his father-in-law, Charles Knight, and had led to his first taking an interest in one of the pet projects of the large-minded statesman. Lord Brougham, on his part, had a high esteem for Commissioner Kerr. On one occasion, indeed (June, 1863), Brougham, on introducing a Conciliation Bill into the House of Lords, said (see *Daily News* report), "In preparing this Bill I have had the inestimable benefit of the assistance and advice of my learned friend Mr. Kerr, the Judge of the Sheriff's Court, where above 4,000 cases are tried in a year, and where the want of conciliation proceedings is constantly felt."

The non-professional reader will almost certainly

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ask what Courts of Conciliation are ; while so little interest is now taken in the subject that not a few professional men will not improbably be obliged to also make the same inquiry. Broadly, the scheme for establishing "Courts of Conciliation" in which Lord Brougham and his protégé¹ the Commissioner took a common interest may be made plain to the most ordinary mind by the following explanation. It at present very often happens that after two contending parties have both spent an enormous sum on the preliminary stages of an action and in "briefing eminent Counsel," when, too, their feelings towards each other have grown embittered, the case comes on for trial, that then, but not till then, and at the last moment, the parties and their Counsel "see the Judge in his private room," and his lordship's kindly offices and sound advice bring about a complete and lasting reconciliation between them. It now and again, too, happens that a good-natured friend who wishes well to both of them, dares to even take the risk of the misfortune which too often befalls "those who in quarrels interpose." He, by kindly intervention at a sufficiently early stage, prevents the disputing parties from ever rushing into litigation with one another at all. "Courts of Conciliation" would simply at an early stage do that which is now left for the kind offices of a kind friend, or which the Judge can at present only do at the last moment. Where their intervention was sought, Courts of Conciliation would, on their aid being invoked, at once

¹ It will be recollected that Brougham had given Kerr a testimonial. See *ante*, p. 95.

“ Courts of Conciliation ”

play the part of the kindly friend, by providing a Judge who would be able to intervene without even the danger of “ a sanguinary nasal extremity ” as his sole reward for so doing ! The State would provide him with appropriate “ reward ” for exerting his influence in the direction of peace at an early stage of the quarrel. If it could not always protect him from the anger and dissatisfaction of one or other of the parties, or possibly even of both, it would at least, by giving him an official and judicial position, secure him effectually against suffering any personal violence or even inconvenience, in consequence of his efforts to bring about a pacification between them.

In the speech in the House of Lords in June, 1863, in which he had mentioned Kerr by name, Lord Brougham had said :—

In discharging the order for second reading of the Bill and presenting another slightly different with the same object, I wish it to be understood that my anxiety to stop useless litigation is by no means an attack on the profession of which, for above sixty years, I have been a member. Against lawyers, I am far from quoting the divine saying that they load men with burdens grievous to be borne, which they themselves touch not with one of their fingers. Of neither branch of the profession do I so speak. Nor do I say that they alone are to blame for needless litigation. Their clients must share the blame with them. But that such litigation is a great evil to the parties and to the community is plain, and this evil I am anxious by all means to remedy. When bringing in the first County Courts Bill in the other House, I stated, with Sir J. Scarlett's concurrence, that at the last assizes for Lancaster, including of course Liverpool and Manchester, the fifty verdicts returned were for sums averaging less than £14. Though five or six actions were to try rights, yet forty out of the fifty were for debt and damages. Although the sum recovered was under £700, the cost to the parties was above

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£5,000. The establishment of County Courts and the Act recently passed on bills, notes and bonds, has considerably reduced the amount of litigation in the Superior Courts. In Scotland, from which both measures were borrowed, 22,000 suits yearly are brought in the local courts ; in this country above 400,000, for sums exceeding £2,000,000. The benefits derived from these courts are unspeakable, but they have much litigation which either in the inception of suits or their needless continuance is a grievous matter, and can be effectually remedied. It requires no argument to prove the inevitable tendency of parties going before a person wholly impartial and well qualified to advise. In the bulk of cases his advice will be followed, and hopeless actions or groundless defences will be stopped. Experience has abundantly shown that such is the actual result of Conciliation Courts. Whenever they have been fairly tried, they have greatly lessened the amount of litigation. In France, where the system was introduced from Denmark, though with important alterations, the greater part of the suits brought have been settled without trial. In Switzerland, a large proportion. In Denmark, where this law has existed for above a century, out of 30,000 suits commenced 3,000 only came to trial, the other 27,000 being either settled under the Judge's advice, or dropped before trial. There is a code of procedure, most ably framed by Sir B. Pine, Governor of our islands of St. Kitts and Auguilla, and he has introduced Conciliation Courts with the entire assent of his law officers, who have no doubts of its success. He has taken it from the neighbouring island of St. Thomas, the great emporium of trade with the Spanish main. In that island, as in Santa Cruz, he learnt from the Governor (himself, like Sir B. Pine, a lawyer), that the effect of the Courts of Conciliation has been almost to extinguish hostile litigation. Can it be wondered at that one should feel most desirous to introduce this institution, of which the effect is to substitute the incalculable blessing of peace for angry contention? If I shall succeed in obtaining this end, I shall believe that, long as my life has been, I have not lived in vain. I present this Bill for establishing Courts of Conciliation. The chief change made in the form regards the mode of paying the Judge.

In the December following, the *Globe* newspaper contained an article making reference to Lord

“Courts of Conciliation”

Brougham's then recent County Court Legislation, and somehow confusing his later attempts to establish “Courts of Conciliation” with this. On this, the Commissioner addressed to it the following letter, which duly appeared on the same evening in its columns on December 4, 1863 :—

SIR,—I have only to-day seen the article in your impression of Saturday last, in which you express a wish to see those restrictions removed which enable a certain class of attorneys to bring trifling actions in the Superior Courts, and call upon Lord Brougham to perfect his County Court work by legislation.

I believe no one is more anxious than his lordship to do so, but those only who have had to contend with the opposition which is offered to every project of law reform, can appreciate the difficulties which have to be encountered and overcome. The legislation which you desire has, however, no relation whatever to Lord Brougham's scheme for establishing Courts of Conciliation. Such tribunals will never be sought by the attorneys, who resort to the Superior Courts for the sake of costs. They are intended for a very different class of suitors—for those in short who, knowing the mischiefs arising from litigation, desire to save those with whom they have to contend, as well as themselves, from its consequences, who would endeavour, even in the irritating affairs of everyday life, to remember that “Blessed are the peace-makers.” I do not write, however, to argue this matter in your columns, but simply to correct a misapprehension into which you have fallen, in the article I have alluded to. You there say that “the Courts of Conciliation” have in fact been found little better than a failure. The contrary is, I think, the fact. In Denmark, out of 30,000 suits, 3,000 only, or one-tenth, get beyond the stage of conciliation. In Santa Cruz, hostile litigation has been extinguished, and this has led to the recent establishment of conciliation, as a feature of legal procedure, by the legislature of St. Kitts, the effect of which we do not yet know. A recent return of the tribunal of the Commerce of Paris also shows that, out of 4,000 contested suits, upwards of one-fourth were settled in *chambre de conciliation*, and, had I time to quote other statistical returns, I do not doubt that I could accumulate proofs in support

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of my assertion. But you, Sir, cannot surely be blind to what is reported, in almost every daily paper, of "a juror being withdrawn" in such a case; "his lordship suggesting terms" in another; the parties "referring what is to be done to a gentleman of the Bar" in a third, and so on, in all of which the costs of litigation might have been saved and, what is infinitely of greater moment, the passions of parties not left embittered, had they resorted, in the first instance, to a Judge specially charged to arrange their differences, if that were possible. I shall not occupy your valuable space with any comments on the absolutely voluntary nature of the Bill introduced last session. I trust that this feature of the measure will disarm all opposition, and especially that the press, on which much depends, and to which the public interest ought ever to be the first consideration, will urge a trial of Lord Brougham's project. He has lived to see all the law reforms he proposed in 1826 adopted, with the exception of Conciliation Courts. It is to be hoped that next Session will see this last proposal, one however, which he has unceasingly urged throughout his long and useful life, accepted by the legislature.

I am, Sir, your obedient servant,

R. MALCOLM KERR.

Temple, December 4th.

That lawyers should, as a body, hate any scheme for establishing "Courts of Conciliation" such as that propounded by Lord Brougham, with the aid of his disciple Commissioner Kerr, is not to be wondered at. Its adoption would "ruin the profession," since it would prevent enormous sums being perpetually wasted on legal proceedings, the result of which necessarily mortifies the defeated party, and is rarely entirely satisfactory to even the successful one.

Successive "Governments," too, love such a scheme but little. The State would have to provide and pay the Judges of the Courts of Conciliation. No doubt it already pays the Judges who now dispense "Justice according to Law" in this country. But its outlay in

“ Courts of Conciliation ”

so doing is at present largely repaid by the fees levied from suitors, and in some directions even a profit is actually derived from the sale of justice. For we English are less enlightened now in this matter than our own ancestors were seven centuries ago. To-day the sovereign people, contrary to the provisions of Magna Charta, does daily “sell justice”; and to those who are not ready to buy it at the price demanded altogether denies “doing it,” save when it inflicts criminal punishment.

Parliament has, of late years, not hesitated to find the solution for every evil apart from Imperial matters for which it has deigned to seek a remedy by thrusting the duty of dealing with it upon the Judges of County Courts. The Judges of the High Court might well surely be now entrusted with the making of quite a new experiment, and charged with the duty of acting without remuneration as Judges of Courts of Conciliation. After a short time, few actions would come to be entered for trial either at any of the great centres of country districts, or at our commercial centres. The country squires and the business men in them would soon come to know that within a short time, there would be in their neighbourhood a Judge of the High Court to whom they might privately and informally refer all their disputes. But the dream of Commissioner Kerr, the last Judge of the Sheriff's Court of London, that such a state of things can ever be brought about in this country are, it is feared, as unlikely to be ever realised as that of his distinguished predecessor, Sir Thomas More, who framed the romantic idea of a Utopia itself!

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"Free Justice" the Commissioner also favoured.¹ He thought, too, that there ought to be at least a great reduction in the fees levied in Courts of Justice, and especially of those extracted in the "poor man's Court"—the County Court—where suppliants for justice are taxed far more heavily even than they are in the High Court.² All these views are either actually corollaries of, or at least closely connected with, the ideas strongly entertained by him as to the necessity for the establishment of "Courts of Conciliation" in this country.

What has been said on these matters sheds a considerable light upon the Commissioner's well-known views as to lawyers and their costs, and the policy and the justice of a considerable reduction being made in the fees exacted in Courts of Law. Whatever may be said as to "municipal trading" in general, it can hardly be denied that for either a municipality, or still less for Government, to traffic in the sale of public justice, in order to derive a profit from the quarrels of those whom they govern, is little to the credit of the civilisation of the twentieth century.

Another matter connected with the law that stood prominent in the Commissioner's personal interests was his membership of Clifford's Inn, as it will be called in this chapter, or, in exact and precise legal language, "The Honourable Society of Clifford's

¹ As to this, see *supra*, p. 226.

² For once, the Law Society and the Commissioner were at one. A reduced scale of County Court fees has been suggested by the former.

Connection with Clifford's Inn

Inn." This closely allied itself with his antiquarian tastes. The non-legal reader will probably even now inquire, "What was Clifford's Inn?" It will doubtless not be very many years before a legal reader also will himself make a similar inquiry. Clifford's Inn has one of the two last subsisting voluntary legal societies of the "Inns of Chancery" which once existed. Just as Serjeants' Inn was long the home or "Inn" of the Serjeants, and the Inns of Court are still the habitations of Barristers, the dwellings of all these three distinct degrees in the law, viz., Serjeants, Barristers, and Solicitors were their "Inns." Lawyers of each of these classes formed a series of "clubs," as we should now call them. Each of these clubs occupied some large and appropriate house. Familiar examples of this are furnished by one Society having taken up its abode in the mansion of the Earls of Lincoln, and having, from doing so, acquired the name of the Honourable Society of Lincoln's Inn; while another similar Society was that of "Gray's Inn," the latter name being derived from the Society occupying the town house of the Earl de Grey.

The attorneys who framed the writs called "Original Writs," by which every action was in old days commenced, formed themselves into Societies like their professional superiors, and each of these Societies also took up its abode in some large house. One such Society established itself in the House of the Earls of Clifford, and from this came to be called "The Honourable Society of Clifford's Inn." This Society, in a degenerated form, remained till within a few years of the close of the nineteenth century.

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Till 1893, it still continued unbroken the existence which it had maintained for centuries previously. The Constitution of this Society was peculiar to itself. It also possessed at least one quaint ceremony which still survived in its entirety till the dissolution of the Society. As to its constitution, the "Inn" had originally contained sufficient chambers to accommodate seventeen members. Of these, one was President for the year, annually chosen from among the "Rules"; twelve were "Rules," and four constituted the so-called "Kentish Mess," or residents in the Inn. Only four of the Kentish Mess could have chambers in the Inn, but that Mess itself might contain as many more members as were from time to time elected to the Inn. On the death of a "Rule," a Member of the Kentish Mess was elected to succeed him in his office of "Rule"; and one of the "Rules" nominated a new member of the Kentish Mess. The "Rules" arranged a rotation amongst themselves as to the order in which they should respectively exercise this right of nomination. An old copy, if not the original, of the ancient regulations or bye-laws of the Inn was purchased by the late Commissioner, and was in his possession at the time of his death in November, 1902. His son gave this to the Solicitor to the Society, while the present writer is indebted to him for a copy of a translation of them made previously to their being parted with, which is printed as Appendix II. to this work.

For some centuries the Inns of Chancery were, as the very workshops of the Law, the nurseries of the Inns of

History of Clifford's Inn

Court. The latter were entirely recruited, from time to time, by students brought from an Inn of Chancery into them. Every student for the Bar, indeed, used to be obliged to pass through an Inn of Chancery before entering an Inn of Court. He was nevertheless not bound to enter at the particular Inn of Court to which his Inn of Chancery was attached. The practice of passing through an Inn of Chancery, before entering an Inn of Court, gradually grew into disuse, during and after the Civil Wars of the Rebellion. Sir Symond D'Gives, writing in his diary, gives an interesting account of how, being a member of "New Inn," he took part at a "moot" in his Inn of Chancery, and was promoted to an Inn of Court by the reader sent to it by the Middle Temple, to which it was attached. For the manner in which the Inns of Court obtained their recruits was by periodically sending an "Utter Barrister" of some standing to "read abroad" at the Inns of Chancery belonging to them. Clifford's Inn was formerly attached to the Inner Temple, and it is within living memory how a reader used to be at intervals sent by the latter Inn to the former; but no one recollects a "Reading" having ever taken place. Whenever, within memory, a reader arrived, and had announced his mission, he used to be invited to sit down and take a glass of wine. This he used to do so willingly, that it is not within any one's recollection that he ever was known to get up again, and to proceed with his "Reading."

Clifford's Inn, which has been before mentioned as having survived till its Society was broken up,

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used to fill with wonder and astonishment visitors to it who had not previously dined there, by the grace after dinner. This was offered by a ceremony performed in entire silence. The Commissioner's son, R. M. N. Kerr, Esq., Barrister-at-Law, who, like his father, was a "Rule" of the Inn after having been previously for some years a member of its Kentish Mess, has kindly supplied the author with the following account of this:—

THE GRACE AT CLIFFORD'S INN.

After dinner, when the table-cloths had been removed, and before the wine and dessert was placed on the tables, a loaf, made in the form of a cross of four small loaves, was handed to the senior member of the Kentish Mess, who presided as Chairman at that table. He then, with a small hammer, knocked once on the table, and every one, including the Principal and Rules at the other table, stood up. Then, with his right hand, he raised the loaf up above his head to the full extent of his arm, and brought it down with a thump on the table. This he did three times, and then slid it down the full length of the table to the Vice-President, who arrested its career, and handed it to a servant in attendance.

It is generally explained that the whole of this curious ceremony was symbolical, and of origin dating from the days when all lawyers were either actually ecclesiastics or at least connected in some way with the Church. The knock given by the senior member of the Kentish Mess at the commencement was merely to attract attention, and had no symbolic meaning. But the bread, made in the form of a loaf with four small arms, symbolised the Bread of Life, centred on the Gospels of the four Evan-

Clifford's Inn Grace

gelists. The three blows upon the table were an invocation of the Trinity. The bread being slid down the table symbolised that this Bread of the Gospel was spread over the world. Finally, the Bread was removed to be given to the poor, and reminds us of Charity.

Curiously enough three raps on a table before grace are also given at the dinners in Hall in the Temple, and it is still a tradition in the dwelling of the Templars that the broken meat after dinner is to be given to the poor. Some remnants of this latter custom could still be traced at the Middle Temple not more than a quarter of a century ago.

Great was the pleasure of the Commissioner at finding a congenial spirit who could appreciate a dinner at Clifford's Inn with its accompaniment of a quaint, old-world Grace afterwards. To such an one, an invitation to dine as his guest there was sure to be forthcoming. Upon one occasion, the famous author of *Vanity Fair* was invited to dine at Clifford's Inn. He was a student of the Middle Temple, and, as is well known, was much interested in legal matters. But the dinner was not a success. Thackeray, for some reason, was far from seeming to enjoy it, after being served with the first course and laid down his spoon, folded his hands, and stared gloomily and abstractedly about him, seemingly ill at ease. At the first opportunity he moodily left the room. Afterwards the explanation was imparted to a select few. It will be recollected that the immortal classic just named contains a vivid description of Rawdon

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Crawley's being arrested, and taken to a sponging house in Cursitor Street. That incident is founded on the fact that such a calamity had actually befallen a friend of his with whom the great novelist had been intimately connected in some of the numerous literary ventures in which he had embarked in early life, and by which he had himself lost the little patrimony which he originally possessed. It is sometimes erroneously said that it was the great classic novelist himself who had been arrested. This, however, is altogether incorrect. For, many as were his literary misfortunes, Thackeray was never himself at any time arrested for debt. But he was indignant on behalf of the friend, whose misfortunes had served as a model for the description of Rawdon Crawley's adventures at the sponging house. And it so happened that the writ on which Thackeray's friend had been arrested, had, unluckily, been issued by the president of the evening on the occasion when the great writer was invited to dine at Clifford's Inn as a guest—probably the guest of the evening.

The writer's own experiences of dining at Clifford's Inn as the Commissioner's guest are happily less unpleasant. But there is a memory attached to them also. The place contained many most respectable attorneys of "the good old school"—men each of whom was clad in a black coat of broadcloth, with his gold eyeglass suspended round his neck. One of these, so soon as the quaint old ceremony of grace had been gone through, produced a cigar-case, and with an old-world courtesy and politeness, before

Ready Repartees

taking a cigar himself, offered one to the Commissioner. Now the latter hated smoking, which he considered to be a "dirty, disgusting habit." To the polite offer made by the old attorney so graciously, he accordingly replied brusquely, "Don't smoke; it's not one of my vices." Retorted the old courtier, unruffled, and still speaking in terms of the sweetest politeness, "Very sorry, Commissioner, but I'm *so* glad to find that I discovered *one* you don't possess." Rejoined the Commissioner gruffly, "Knew directly I had said it you'd quote too." But he bore no malice, for, as has already been told, he loved a good joke or a smart repartee even when it had been made at his own expense. To sometimes have the laugh turned against him by the appropriate finishing of a quotation begun by himself, was a fate not singular to the Commissioner. For it is recorded that on one occasion Bishop Wilberforce, having elected to walk, rather than ride, back to a country house at which he was staying, during a shower of rain was overtaken by Lord Palmerston, who had elected to go home in the family brougham, and looking triumphantly out of the window, exclaimed, "How blest is he who ne'er consents, by ill-advice to *walk*," only to receive the retort, "Nor stands in sinners' ways, nor sits, *where men profanely talk*." Again it is said that Egan, the famous Irish Barrister and wit, one day meeting Curran, alike a brother wit and a brother Barrister, and observing a small creature whose name and nature may be guessed, crawling on the latter's bands, remarked, "*Cujum tecus, an Mælibæi?*" only to receive the immediate

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reply "*Non, verum Egonis; nuper mihi tradidit Egon.*"¹

The repartee to him mentioned above recalls another joke made at the Commissioner's expense at the Guildhall Luncheon Club. One day he had, in a moment of abstracted forgetfulness, left all his money on the table in the Judge's room at the Court. Finding, when asked to pay for his lunch, that he had not any money with him, he said to an Alderman near, "Lend me half a crown." Replied the witty Alderman, "I would with great pleasure, but I heard a Judge, for whose opinion I have the greatest respect, say the other day, 'Never give credit—credit is the curse of this country;' I at once determined to follow this good advice, and have ever since. So I cannot oblige you."

To return to Clifford's Inn. The ancient society of that Inn used to dine together on three days—Mondays, Wednesdays, and Fridays—in each of the weeks that followed the four legal terms in the year, viz., Hilary Term (in January), Easter Term, Trinity Term, and Michaelmas Term, kept at the Inns of Court. These dinners were given up about the year 1893, and the movable property of the Inn was, in that year, distributed amongst the members of

¹ For the benefit of those whose Latin has, like the writer's, "grown rusty," the late Lord Bowen's elegant translation is appended :—

"Whose is the flock, Dametas?
Are yon Mœlibeus's sheep?"
"Nay—they are Ægon's, and Ægon
Entrusts them now to my keep."

Relics of Clifford's Inn

the Inn. The old oak table, at which Sir Matthew Hale and the Judges sat at Clifford's Inn as a "Court of Judicature" under a special Act of Parliament (19 Car. II. c. 2) from 1668-72 to decide the numerous disputes as to lights, &c., which arose on the rebuilding of the City, after the Great Fire of 1666, and made what were called the "Fire Decrees," fell to the lot of the Commissioner on the distribution. It was presented by him to the Guildhall Library towards the end of 1893. The Library Committee of the Corporation, on accepting it (as recorded in a letter written by their direction on December 5, 1893), ordered a brass plate to be placed upon it with a suitable inscription. The gift would obviously have been very appropriate in any case, but it was rendered the more so by the fact that the portraits of fourteen of the Judges who sat at it when the Fire Decrees were made had been painted, by order of the Court of Aldermen, by one Michael Wright, and are also still in the possession of the Corporation of London. About the same time, viz., November, 1893, the Commissioner also presented to the Corporation some old heraldic stained glass from Clifford's Inn, which had likewise fallen to his lot. On this were recorded the arms of certain former members of that Inn. The Law and City Courts Committee of the Corporation not only accepted this glass with thanks, but very gracefully caused it to be hung in the bay-window of the Judge's private room at the City of London Court. This bay-window contains four panels. Those on the extreme left and on the

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extreme right on either side are both "splayed" towards two centre panels, set in line with one another. The panel on the extreme left of a person looking from the interior of the room at the window contains the well-known arms of Edward the Confessor, with their familiar "azure" (or blue) "field." Immediately opposite these, in the panel on the extreme right-hand side of the window, is a bearing unique in English heraldry. The arms of William Skreen have been placed here. He was an old lawyer belonging to Clifford's Inn, whom we learn from the *Harleian* MS. to have flourished in the reigns of Richard II. and his two immediate successors. These arms, to use more technical language, are an azure "field" divided by three golden ("or") bands, with the spaces between filled with eight keys: there being in the top one a row of three keys; the next two spaces each containing a row of two keys; while the bottom one is filled by a single key. No other bearing of eight keys exists, or was ever known, in this country.¹ The bay-window's two centre panels are filled thus: That on the left by the arms (some wrens) of Sir Christopher Wray, once Lord Chief Justice of the King's Bench, who had sprung from Clifford's Inn; that on the right by the bearings of Sir Robert Heath, a former member of Clifford's Inn, who became Lord Chief Justice of the Court of Common

¹ When we find a family of Skrine, a name pronounced Screen, resident at Claverton Court, near Bath, and recollect that "Clavis" is the Latin for "key," some connection with the old lawyer of Richard II.'s day might naturally be suspected. But none exists

Relics of Clifford's Inn

Pleas. On the glass at the bottom of the window is inscribed :—

"This heraldic stained Glass
was presented in the year 1893 by
ROBERT MALCOLM KERR, Esq., LL.D., Judge of the
City of London Court."

There is room for the addition of a few more words. Were it added, "By whom it was obtained from Clifford's Inn," this further line would perpetuate the memory of the City's historical connection with Clifford's Inn. Probably it did not do this owing to the Commissioner not having remembered to mention the fact, nor bethought him how appropriate such an addition to the inscription would have been.

The name of Commissioner Kerr himself will, however, probably always be connected with the dissolution of the last surviving of the Inns of Chancery. It will remain historically connected with that event by the suitable inscription on the oak table in the Guildhall Library. It is enshrined in the Law Reports in connection with the Inn by the case of *Smith v. Kerr*,¹ the case which established, in an action brought against the Commissioner, as the Senior "Rule" of Clifford's Inn, that its members could not divide the property of the Inn amongst themselves, as had previously been done at Serjeants' Inn, and at all the other Inns of Chancery, except two, but that the public were entitled to have such property devoted to some purpose of legal education. This case in fact decided that the Societies

¹ [1900] 2 Ch. 511; on Appeal 1902 1 Ch. 774.

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of the old Inns of Chancery held their properties for public purposes—technically were a “charity.” This decision certainly came a little late in the day, seeing that it was not given till all the old Inns of Chancery save two had been already broken up; that Serjeants’ Inn had a generation ago undergone the same fate; and that in all these cases the whole property of each Society had been divided by its members amongst themselves without question from any one. The Commissioner thought that the members of Clifford’s Inn ought to have been allowed to do the same. He sarcastically said that it was a unique instance of the honesty of lawyers that the deed, several centuries old, on the words of which it was decided that a “charity” existed, and the possible effect of which had long been known, had not been burnt long ago. With the dissolution of the last-surviving of the old Inns of Chancery the Commissioner’s name long will remain historically connected, alike by the law case already mentioned and also by the inscription on the oak table in the Guildhall Library.

Besides being a member of Clifford’s Inn, the Commissioner also was an active and energetic member of another semi-public society connected not with the law but with the City. In a pungent, but not unkindly, notice of him, which appeared in *Vanity Fair*, together with the excellent cartoon of him containing the likeness in colours, reproduced as the frontispiece to this book, it was said, amongst other things, that he had “been a Master of the Tallow Chandlers Company without softening the asperities of his character.”

St. Mary's, Munster Square

The property of the Tallow Chandlers Company had been somewhat neglected when he joined. It was at least in some part due to his care as to its subsequent management that it was so greatly improved in value that the Company is now a wealthy one, notwithstanding that it has recently expended a very considerable sum of money in restoring and re-decorating its ancient Hall on Dowgate Hill.

Passing from these semi-public institutions with which the Commissioner was closely identified, and in which he also took a very great interest, a matter of a strictly private matter may now be referred to—the Church of St. Mary Magdalen, Munster Square. This church will be recollected to have had as its vicar one of the earliest pioneers of the “High Church” movement in London. The Commissioner, although a Scotchman, had no Presbyterian leanings. Indeed, it is said that on one occasion, when he was sitting at the Old Bailey, it chanced that he had to try a young fellow for a robbery committed on a Sunday upon his employer while the family were absent at Church. It transpired during the case that the master was a strict “Sabbatarian,” who would not permit the lad to go out for a walk or indulge in any other reasonable recreation, on “the Lord’s day.” The Commissioner soundly lectured both employer and employed on this score, and pointed out to them that the robbery would probably never have taken place if the day had been allowed to be occupied in a reasonable manner.

A member of the congregation at St. Mary’s writes

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as follows as regards the Commissioner's connection with that Church :—

February 10, 1903.

In a small pamphlet called *Edward Stuart's Life Work*, published in 1877, at the time of his death, at a shop in Osnaburg Street, I think, will be found references to the Commissioner's charity and help to St. Mary Magdalen's, Munster Square (Rev. Edward Stuart was the first vicar, from 1852 to February, 1877). I know the Commissioner was very active and zealous, and a liberal giver. Rev. Frederick Ponsonby, the second vicar, was a friend of mine, and mentioned this.

Rev. Vincent Borradaile, now vicar of St. James, Hampstead Road, was one of the priests at St. Mary Magdalen's in the Commissioner's time, and he could probably help you with information as to this side of Mr. Kerr's character if you wrote to him mentioning my name.

Often I have seen on a Sunday morning *three* grand old men worshipping at St. Mary Magdalen's, viz., Lord Salisbury, Mr. Gladstone, and the Commissioner.

The clergyman to whom the above letter referred, on being applied to, at once most courteously and kindly replied in the following very interesting letter :

ST. JAMES'S VICARAGE, 37A, AMPHILL SQUARE, N.W.

February 16, 1903.

DEAR SIR,—I am afraid I cannot supply you with many particulars concerning our late friend, Commissioner Kerr. I remember him well as a most regular attendant every Sunday morning. He was a great friend both of Mr. Ponsonby and Mr. Stuart, the founder of the church. It was mainly owing to him that a Parochial Council was formed, elected by the communicants of the congregation. He always felt very strongly that the whole congregation, and not the vicar, should be responsible for the finances of the church, and that there should be a representative body with whom the vicar could take council on any matters relating to the wellbeing of the parish.

He always maintained that the ritual of St. Mary Magdalen's

Religious Views

Church was the nearest approach to perfection in rendering the service of the Book of Common Prayer.

I do not know whether you are aware that he published a book for use at Holy Communion, entitled, *A Companion to the Altar*, by a Layman. It was, as stated therein, "compiled for the use of a few members of the congregation worshipping at the Church of St. Mary Magdalen, Munster Square." It contains the office of Holy Communion, Introits, and Post-Communion for the year, and special services for the burial of the dead, and commemoration of the Faithful Departed. It is published by William Clowes and Sons, 13, Charing Cross.

After the death of Rev. E. Stuart, the founder of the Church, Mr. Kerr took steps to provide for an annual Requiem Service.

If I can give you any further information I shall be very glad to do so.

Yours faithfully,

VINCENT G. BORRADAILE.

Some ten years after her death (which will be recollected to have occurred on May 19, 1884), the Commissioner erected in St. Mary's, Munster Square, a handsome stained-glass window to the memory of his wife. In the issue of the *Citizen* newspaper (November 28, 1896) in which this fact is named, we are reminded that this Church was itself erected by the Alderson family, in memory of the late Baron Alderson (a well-known and very prominent High Churchman in his day), the father of the late Lady Salisbury; that it long has been "one of the highest in ritual in London"; and the Commissioner is referred to as "a leading Pillar of that famous Church." But greatly as he valued elaborate ritual as symbolical of the highest teachings of the Christian religion, the Commissioner prized it only for this, and, as might have been expected from a mind such as his, took a broad grasp of everything ecclesiastical, and was no mere form-

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worshipper. He held the highly practical view, that the discoveries of modern science ought not to be ignored or disregarded, but accepted as often corroborating earlier teaching, which the Church was unable to fully explain. For instance, he thought that by aid of the Röntgen rays it was possible for the human intellect to form a more accurate idea than it ever before could do of the nature of the body after the Resurrection, and of that great mystery itself. The recent observation of astronomy, showing that the disappearance of a star in a distant constellation was due to its sudden collision with another planet, and instant destruction thereupon, and the description of what must have occurred, given by a distinguished German astronomer (himself a non-believer), in words curiously like those in which the end of this world is described in the New Testament, would, too, have afforded the Commissioner an example of his theory that modern science in many matters corroborates rather than destroys the testimony of Scripture. Viewing it in this spirit, he had none of that morbid horror of cremation which is felt by smaller minds; and regarded what became of this mortal case or shell after death as a matter of utter indifference from a religious aspect. Accordingly, he at one time contemplated cremation for himself on sanitary grounds, though he ultimately left no directions on the subject.

But enough has been now said in this connection. For the private religious opinions of even one who is now deceased are hardly matters to be discussed publicly in much detail. Hardly less sacred than his

Literary and other Friendships

religious views are the confidences between a dead man and his friends—perhaps they are, in the opinion of some, even more sacred.

The notice of the late Commissioner in *Vanity Fair* which has been already referred to¹ closed with the remark, "yet he has friends." The comment on this, truly made by one of those who knew him well, was that it should have been said that "he has troops of friends."

Closely connected with literature as he in many ways was, amongst the many friendships which the Commissioner possessed literary friendships were some of the most pleasant to him, and the pleasure must have been mutually shared both by those who were honoured with them as well as by himself. Many a valuable literary hint has he given to friends whom he thought able to appreciate it. Perhaps one of the most successful of these hints, of which he was not generally known to have been the author, was that in which he gave to its proprietor the motto for *Truth*. Being an excellent Latin scholar, he it was who suggested the motto, "*Cultores veritatis, fraudis inimici*," which was at once adopted, and to this day is prefixed to every issue of that paper.

Legal or literary friendships were, however, by no means the only ones the Commissioner had. Among the clergy his friends were also numerous, and his intimacy with them has been incidentally mentioned in an earlier portion of the present chapter. More than one artist, or one architect, knew him well. Of the medical men whom he knew, one of his most

¹ *Ante*, p. 306.

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intimate friends was the late Dr. Lennox Browne, who was also his neighbour at Northwood. The latter's somewhat sudden and unexpected death, in the autumn of 1902, apart from the loss of a devoted medical attendant, had such an effect upon the Commissioner that it, with other causes, probably to a very appreciable extent accelerated his own end.

At one time, too, Commissioner Kerr was an energetic freemason ; and in Scotland, indeed, held high Masonic rank. For many of the later years of his life he belonged to no Lodge of Freemasons, and took no part in the active work of the craft. The reason for this action was that, as he told the writer, he once at a Masonic Lodge found himself associating closely with a man whose case he had to decide the next morning. He thought it better to take measures to at once discharge himself of the danger of being ever again placed in a similar position of embarrassment. To the last, however, he took considerable interest in the administration of the great Masonic charities.

When he had been induced to take up what he knew to be a deserving "case," either in Freemasonry, or in connection with any other of the many charities with which he was associated—such for example as the St. Anne's Asylum—only those about him were able to form any estimate of the energy and zeal with which he would work, incessantly and indefatigably, to secure its success.

A jealous anxiety to treat both his friends and himself with exact justice, was a marked characteristic of the Commissioner's mind. Sometimes, indeed, he carried this so far that it did him an injustice by

Shrewdness for Friends' Interests

earning for him the reputation of being stingy and ungenerous, though he, in truth, was precisely the reverse. When off the Bench, his desire that justice in its entirety should reach both his friends and himself was as keen as, when he was on it, that all who came before him should receive it.

As Mr. Macrory has noted, he was always shrewd and astute to procure justice for his friends whenever any action on his part could do so. Love—intense love of it, merely for its own sake, was part of the man's very nature. To give many instances of the kindly services of this nature rendered by him to others would not be by any means impossible, but might not be agreeable to them, or to their friends. To tell the tale of the penetrating shrewdness which prompted a similar kindness to oneself, will at worst expose one to a charge of being egotistical. This risk can be taken in view of the consideration and thought which it shows that the Commissioner habitually gave to the interests of others as well as to his own.¹ After the death of Mrs. Kerr, in 1884, the

¹ A better illustration of the anxious care and shrewd thought exercised by the Commissioner for his friends could perhaps, however, hardly be found than the tale told in the following pages. Any delicacy which might otherwise have been felt about the making public of these has been destroyed by a Minister, who was himself a party to the understanding referred to, having stated in a published letter that the subject of it was "not unwilling" at one time to accept "office," and thus insinuated that he had sought political office; whereas the truth is that there had been thrust upon him a prospect of ordinary professional preferment in a form which, under other circumstances, would have been scorned.

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Commissioner and the writer, for various reasons, connected entirely with the latter, saw little of one another. In the first year of the time, the increasing calls of a rapidly growing professional practice had absorbed the writer's whole time. Subsequently much had happened to him which the Commissioner could only have learnt from watching the public newspapers. The former had, in the next year, foolishly commenced to dabble in the dirty waters of politics, which soon afterwards became more than usually turbid owing to the unfortunate Irish Home Rule question having come into prominence. In that next year, he had for many months been engaged in fighting a hardly contested election against, first, the late Sir Stafford Northcote, and then, on his elevation to the peerage, against Mr. (now Mr. Justice) Kekewich. In November, 1885, having been returned to Parliament by a majority of over 800, he had hardly taken his seat in the House of Commons when Mr. Gladstone's hasty and unfortunate Home Rule scheme was advanced. This, after much political strife, had entailed another election, which had ended in the writer's return by a majority of more than 1,200. Scarcely another year had passed when serious illness followed, not long after severe blows on the head and elsewhere had been sustained by him at a riotous meeting in courtly Kensington's Town Hall, at which he had been betrayed into presiding, in the supposed interest of the Unionist party. Then the newspapers had announced that, being in ill-health, the writer would not again stand for the seat in Parliament of which he was in possession. It had been at once em-

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phatically denied by him that ill-health was the reason for the course which had been taken.

All these things were to be learnt, by interested friends, from the public newspapers. But these did not state, and the Commissioner consequently could not have learnt from them, and certainly did not from the writer, some other incidents which had occurred. His own kindly shrewdness, however, in a large degree guessed them. The explanation of the writer's sudden apparent disappearance from public life had arisen from both a friend of experience on whom he had relied, and he himself, having fallen into a mistake which may be forgiven, since it was made on two occasions by no less experienced a person than the most experienced "old Parliamentary hand" of his century.

On both of these that great man had himself forgotten that the exercise of political patronage is always subject to certain rules. It is said that no Cabinet Minister allows himself to be bound, in the bestowal of his patronage, by any promise made by one of his colleagues. Lord Chancellors and other Cabinet Ministers are naturally extremely jealous that these rules shall always be scrupulously observed. Consequently, to have obtained anything like a pledge from a colleague of the person possessing the patronage usually affords a tolerably sure disqualification for an appointment. Accordingly, though this is little generally known by the public, it is said to be a sort of code of honour with Cabinet Ministers, that no Cabinet Minister ever asks another to bestow his patronage in a particular direction ; that, consequently,

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no promise by any Cabinet Minister ever binds a colleague; and that even his own promise does not bind a Cabinet Minister when a member of a differently constituted Cabinet.

These principles, strange as they may at first sight appear, will be found, on a little reflection, to be essential to our system of Party Government. On the other hand, a pledge given by the official party "Whips" is always observed with the most scrupulous fidelity. It is kept, indeed, however immoral the "consideration" given for it may have been—such as in the common instance of a vote being given regardless of the conscience or convictions of the legislator who gives it, or no matter how great the unfitness of the recipient for the proposed appointment may be. When properly pledged, "the honour of the party" is always preserved.

It is now tolerably widely known that the great Liberal leader, forgetting the above principles, on one occasion, promised a distinguished M.P. lawyer in the Liberal ranks, of commanding ability, to whom the nation was already indebted for having worthily and well acted as one of its representatives on an historic occasion, that the reward of a judgeship should be his if he would but, at a sore crisis in the history of his party, once more contest a constituency in which his influence was such that he had for some years represented it in Parliament. Yet even Mr. Gladstone had been unable to obtain the performance of his promise by a Lord Chancellor in his own Cabinet, who is gratefully remembered for the firmness with which he ever insisted that all judicial appointments

Shrewdness for Friends' Interests

in his gift, from the lowest magisterial one to a seat on the bench, should be filled on his own sole responsibility, and only when he was satisfied that the person on whom it was bestowed was as fit a one for the office as it was possible to find. The same great Liberal Premier is also well known to have on another occasion endeavoured to obtain the appointment to a judgeship of a personal friend, whose fitness to fill such a position was afterwards generally recognised by its being bestowed on him by political opponents; but from his own Lord Chancellor had again been as unsuccessful in obtaining the appointment of his friend to a Judgeship.

Now the constituency for which the writer had been returned had formerly contained, as a centre, a borough mentioned by Hallam as remarkable for the skill with which it had, for centuries, evaded the penalties of notorious corruption. The constituencies formed by the new county divisions, with the old boroughs as their centres, had most happily in general created a new order of things. This one indeed had become, as a whole, absolutely pure, and even the old borough had itself mostly become so. Still there were, however, yet remaining in it a few men who preferred the old unregenerate state of political matters, and pined for that more lavish expenditure which it would have been easy to obtain in the old times. Some of these thought that his illness afforded a capital opportunity of getting rid of a man who had plainly told them that he possessed neither the ability nor the will to spend money as "freely" as the ancient customs of the borough had long sanctioned, but whose

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return, by the constituency as a whole, with the majorities mentioned before, sufficed to show could hardly be got rid of at any other time. A brace of local politicians, whose financial positions were soon afterwards revealed to be such as forbad their themselves gratuitously devoting time and money to politics, conceived the idea that the interests of the constituency required a new member of less parsimonious instincts, and that the desired moment for deliverance from the old one had arrived. They accordingly had managed to organise a slight show of local dissatisfaction, though out of some 10,000 electors only their own two voices were found to give expression to it. This, however, was enough for the party "whips" in London, who had axes of their own to grind. These, on the one side, disliked every M.P. who had felt it his duty to vote against a measure on which a ministry had staked its existence, merely because a little constitutional experience had told them, as it apparently now has some of the very Cabinet by which the Bill embodying it was introduced, that the exact scheme for Home Rule in Ireland which was at that period proposed could never have worked without fatal friction arising between the two countries named. Accordingly, no support from that quarter was to be expected. The "whips" on the other side distrusted a recruit from the ranks of their opponents, who failed to show all the zeal which a newly made genuine pervert is expected to display, and declined to act as a political drawer of water and hewer of wood for his new masters, and to support, with a blind belief in its

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wisdom, any measure or principle which they and his fellow-perverts demanded that he should.

In this state of matters a well-known and leading "Liberal Unionist," then recently elevated into a Cabinet Minister, had thought that he could at once serve the wishes of his party, accomplish their ends, and at the same time also benefit the writer, by persuading the latter to retire from a safe seat in Parliament, just when he was seeking to regain his professional position and practice. With this end, he had pressed upon him strongly that he had a wife and family to provide for, and that his objection that retirement from Parliamentary life at such a juncture would be misunderstood, and taken as meaning that a complete and permanent breakdown in health had necessitated a final retirement from all public life, was sufficiently met by the assurance that he had only to comply with what was asked of him, and to "stand aside" at the next election, to enable him to confidently expect some appointment for which he felt himself to be well qualified. Most reluctantly this view had been acceded to, after the Minister, whose good offices and guidance were being relied upon, had provided evidence by a letter from them, showing that two other Cabinet Ministers besides himself also recommended and acquiesced in such an arrangement. But it turned out that the friend on whom the writer relied had greatly overrated his newly acquired powers as a Cabinet Minister, even though he was afterwards able to reinforce them with the generous aid of a Duke. Moreover, the writer's would-be friend, in forgetfulness of the political principles, which have

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been already explained as those by which Cabinet Ministers are governed in the exercise of their patronage, and he himself in ignorance of them, had obtained no formal pledge from the party "whips," but had rested content with these being aware of the arrangements which were made, and taking a copy of a letter in reliance on which they were acquiesced in. Consequently when, after the stipulated sacrifice had been made, the Parliamentary seat had been given up, and the writer's professional career had, as he had foretold, been thereby finally destroyed, a fulfilment of the expectation which had been created was asked and loyally pressed for by his friend, the other survivor of the three Ministers who had at the time been aware of the circumstances had "frankly" replied that the writer's health—though by the way it had become far better than it was when the understanding was volunteered, and its acceptance pressed—rendered any such fulfilment impossible of performance. Both the Minister who had attempted to befriend him and the writer had however innocently accepted the "health" plea, not as a mere excuse, as it in truth was, but as constituting a real reason for the non-payment of the price after the service stipulated for had been rendered. The latter had accordingly taken a course similar to that adopted, at a later period, by Mr. Justice Darling, by trying to demonstrate his fitness for the post he sought by previously discharging its duties. He had by his advice on several occasions sat as Deputy for an old friend amongst the Metropolitan County Court Judges, to whom the above somewhat intricate tale had been made known.

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Now the Commissioner, though he had never been made aware of any of the circumstances, and certainly could not have learnt them from the newspapers, was watching events with the shrewdness and anxious desire to assist a friend which ever distinguished him. So one day he at some personal inconvenience sought the writer, and when he had found him, using a form of familiar address, abruptly asked him, "Pitt, what is the meaning of this advärtisement?" Seeing a little hesitation in answering the question, he answered it himself with the remark, "I see you're sitting for French, and as he can do his own work, and you're not the sort of man to trouble yourself for nothing, I thought you must want a County Court out of those infarnal politicians, and I might help ye perhaps." After this it was of course impossible not to impart to him the precise position of matters. He replied, "Ah, I told Bob directly that it was an advärtisement, and that I should go and see if I could help you"; and promptly added, "Come and sit for me a few times, and if ye can do the work of my Court, ye can take any in England. But," said he, "I'm not going to let ye do it till ye've seen the regular dustman at work on the rubbish heap."

The kindly Commissioner then thoughtfully arranged not only that he should be seen do his work as an instructive object-lesson, but also that (as he on several occasions did) he would himself sit in his private room at the Court, in readiness to give assistance should it be required, while his pupil essayed to discharge the duties of his Court. When he thus acted he certainly

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could have had no thought of deriving any personal benefit from his considerate action, and could have contemplated no gain to himself from it. Subsequent events, indeed, as it happened, so fell out as to make him feel that he required further paid assistance, and to then call upon the writer to render it to him. But even then, notwithstanding the moral claim upon his gratitude which he had thus established, the Commissioner voluntarily offered to increase the amount of the daily fee he would pay to a sum which he said he knew would be more commensurate with the position of a Queen's Counsel. The desired assistance of course could not be refused, but the additional fee was declined, on grounds which, as recorded in the Commissioner's words, borrowed from the writer, were that "more could not be taken in justice to the Commissioner himself, nor less in justice to others."

How many of us would have taken all the thought and made these well-considered necessary arrangements, purely with the object of giving timely aid to a friend in need, who had not even told his wants?

Yet further personal example of the Commissioner's kindly thought for another may be told. After the Corporation's resolution to ask the Lord Chancellor to appoint two Judges familiar with Admiralty work,¹ he showed it to the writer, with the advice that he would do wisely to take on all the Admiralty work of the City Court. This was of course done. Some months later Lord Russell, the late Lord Chief Justice of England, seeing him in

¹ Set out *post*, Chap. XII. p. 355.

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Court, threw down a note, desiring to be seen in his private room on rising for lunch. It then appeared that the kindly Commissioner had, feeble as his health then was, undertaken the exertion of going to see his old friend Lord Russell, and urging upon him, apparently in terms far too eulogistic, qualifications which he deemed to exist for his appointment, whenever he should vacate it, by reason of the way in which he thought that its Admiralty work had been lately performed!

When occasion offered, he would, however, deal with himself as strictly as he would with another, and mete out strict justice to himself. The need of frugality in early life had obliged him to strictly limit his personal expenditure to a sum always exactly calculated beforehand. On one occasion, he had allowed himself the price of a mutton pie for lunch. He carelessly, after the pie had come in, dropped it into the ashes, and all efforts to clean it would not render it fit to eat. Most men would probably have sworn a little, and sent out for another mutton pie. Not so the Commissioner. Nothing could induce him to purchase another pie for his lunch. Probably enough, he gave away that very afternoon in some work of kindness or charity, or possibly paid for the purchase of some book, print, or curio, enough to purchase many mutton pies! But he disciplined himself, and did justice on himself for his own stupidity. So he merely said to himself quietly, "Oh, Malcolm, Malcolm, your clumsy ways have cost ye your lunch!" To a casual observer thus would probably appear to be niggardly stinginess. To any one who knew the man, and the acts of liberal

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charity that he habitually and unostentatiously did, it was something entirely different.

A similar act of self-inflicted justice was the cause of the nearest approach to a difference between him and the writer that ever arose, in the course of over thirty years' friendship. The Commissioner was an enthusiastic collector of good engravings, as well as a collector of old books, curios, and antiquities. On the writer, many years ago, purchasing his library (a matter of some hundreds of pounds) the Commissioner insisted that he must accept, as part of the purchase, three engravings in the room, in sadly dingy frames, and priced at 7s. 6d. for the three. He demurred ; but was told by the Commissioner peremptorily, " If ye'll nae tak' the pictures, ye'll nae have the bûks." The " pictures " were accordingly purchased at 2s. 6d. each, and forthwith consigned to a cupboard. Years afterwards, two of the three were discovered to possess considerable value. Then it was suggested to the Commissioner that he should take the two engravings back, and when he refused it was further playfully suggested that by paying back the two half crowns, *with interest*, he might make the transaction fair. " Nae," said he, " a bargain's a bargain, and ye've just had the better of me. I made ye take them, and ye must keep them, though if I'd nae been a fool, you'd never have had them."

But while thus thoughtful for his friends, and ever anxious to obtain for them all the justice which he thought their due, he also claimed complete and exact justice from his friends for himself.

Thus, for instance, when one autumn, the Corporation

Visits himself with Justice

had presented him with a gift of a hundred guineas, with which to take a holiday, he spontaneously selected as his deputy, while away, an old friend (now deceased) to whom he knew that it was a consideration to earn a few guineas during the Long Vacation. Unfortunately, he made no previous arrangement with him as to the remuneration which was to be paid. There hardly, however, was room for any difficulty on this head. For many, many years, in fact during the whole tenure of his judgeship, the Commissioner always paid the same fee to his "deputies" as he himself had received in his own early days, and as was then usually paid every day to members of the Junior Bar for acting in that capacity. The great growth of fees at the Bar in modern days made that amount appear small when compared with that always allowed by His Majesty's Treasury, which is rightly regarded by the profession generally as now the normal amount. But the Commissioner had for years never altered the fee he paid ; his deputies were never other than either personal friends, who sat gratuitously, and as a matter of mutual accommodation between the Commissioner and themselves, or members of the Junior Bar ; and, indeed, one deputy (the late Mr. O. B. C. Harrison), who was his contemporary, for many years usually acted for him. The Commissioner neither himself made any secret at all as to the daily fee which he habitually paid, nor had he any difficulty in obtaining the help of members of the profession eager to earn it. Had he indeed been so minded, he could have got the whole of his work done by deputies, who from time to time volunteered their gratuitous assistance.

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His view was that the annual present of a hundred guineas which the Corporation for some years generously gave him¹ was intended to pay his travelling expenses and hotel bills while away, as well as to provide a deputy, in return for his usual scale of payment, to do the work of his Court during that time. Accordingly, on his return, he made such an apportionment of it as he thought would carry out this view ; and Mrs. Kerr graciously enough called at the friend's chambers, and left a pretty little clock as a present. The friend, however, claimed the whole of the hundred guineas, did so, moreover, in none too courteous or pleasant a fashion, and returned the clock. The Commissioner, on being pressed, paid the hundred guineas without remark, but the friend alluded to never sat again as deputy for him.

¹ As to this see *post* 336.

CHAPTER XI.

THE DEVELOPMENT OF "THE CITY OF LONDON COURT" DURING THE COMMISSIONER'S JUDGESHIP.

THE Court to which the Commissioner was elected Judge in May, 1859, at that time was a decaying one, and possessed little business. This had indeed fallen to so low a level that, as we have seen, it had been actually suggested in his place in the council chamber by one member of the Corporation that its judgeship had become a mere sinecure, and that it ought as such to be abolished, and that such trivial duties as it still entailed ought to be performed by the Common Serjeant.

With the appointment of Commissioner Kerr to the judgeship an improved procedure and new and vastly improved methods of business were at once introduced, as has been seen in a previous chapter.¹

A large increase in the Court's business speedily resulted. For thirty-six years or thereabouts this steadily increased. The "high-water mark" of the increase was attained in 1895. The whole of this increase must not, however, be attributed to the ability and energy of the Judge of the Court; and

¹ *Ante*, Chap. V., especially at p. 138 and p. 143.

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still less was it due to any aid given to him by the Corporation of those days towards attaining it. How far, indeed, they contributed to the success of the Court, and to the results attained by it, can be judged from the earlier chapter, in which an outline is given of some of their dealings with the Judge.

Candour, however, compels it to be pointed out plainly that the course of County Court business throughout the country generally was, up to the end of 1895, identical with its progress in the City of London Court. The general course of County Court progress and retrogression can be seen at a glance in a most interesting "Comparative Table" contained in the *Judicial Statistics* for 1898-1900, published by the Government, and well known to be the valuable work of Master Macdonell, C.B. Detailed statistics are not offered here, since they are so readily accessible to any one who wishes for them. A reader who does not care for them, if statistics are forced upon him, will probably repeat about the writer the pious wish which a certain well-known and witty baronet, afterwards himself a Judge, once expressed about the late Chief Baron Kelly. The latter was notoriously voracious for "dates." On one occasion when the baronet was before him the learned Judge, after he had been told that one or two "dates" with which he had been furnished were the only important ones in the case, still pressed for more. Counsel apparently yielded to this importunity, for he quietly repeated, "These, my lord, are all the *material* dates;" adding, "I will now proceed to give your

Growth of County Court Business

lordship all the *immaterial* dates.' Turning to his sympathetic learned friends around him, he, in a loud aside, remarked, the old Chief Baron patiently the while writing down the immaterial dates, "I wish the old fellow was in Africa with his maw full of dates." Only, in place of the word "maw," the directly-speaking advocate used a term more familiar to readers of the Bible and to students of Elizabethan literature than it is in "genteel," or even polite, society at the present day. Lest a similar imprecation should descend upon his own head, the present writer will only add that the highest point in County Court business throughout the country, reached in 1896, was not maintained in the five years immediately following.

The increased business which yearly accrued to County Courts generally throughout the country up to 1896 was doubtless due to large increased importance and more extended jurisdiction which had been conferred upon them—when they were established in 1845 they were only given jurisdiction in certain classes of action, up to £20. Five years later, this limit was (in 1850) raised to £50. In 1865 a limited jurisdiction in Equity, up to £500, was bestowed, and in 1868 the County Courts were given an Admiralty jurisdiction. Moreover, the class of cases in which common law jurisdiction could be exercised by them was, till 1896, gradually being enlarged.

While it is but fair and right that the above facts should be pointed out, justice to Commissioner Kerr also requires that the part which he took in obtaining for the Court over which he presided the full benefit

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of all these extensions of jurisdiction should be also pointed out.

The Commissioner's judicial watchword, as it were, is pointed out to have been the Latin motto, "*Est boni Judicis ampliare jurisdictionem*"—or, in English, that it is an attribute of a good Judge to enlarge his jurisdiction. Judged by this motto Commissioner Kerr was one of the best of Judges.

The enlargement of County Court jurisdiction from £20 to £50 had done nothing to benefit the Sheriff's Court, though it, like the County Courts, had been in 1852 given a similar jurisdiction by the Local Act—the London (City) Small Debts Act, 1852. This, too, had been obtained during the time when Mr. Russell Gurney, Q.C.—the excellent Recorder of London in later days—was the Judge of the Court. The days of Mr. Prendergast had certainly seen no improvement in the Court's business. This was at a very low ebb when Commissioner Kerr was appointed in 1859. His improved procedure and vigorous methods at once brought an increase in it.

When, in 1865, the County Court Act of that year gave an Equitable jurisdiction to all County Courts, the City of London Court would not have obtained it unless Commissioner Kerr had at the last moment secured a similar jurisdiction for his Court. A less energetic Judge would have let the matter alone, and comforted himself with the reflection that "The Sheriff's Court of London," as it was then called, had never possessed any jurisdiction in Equity. Instead of being thanked for his zeal and activity in this matter, the reward which he received

Jurisdiction of City Court extended

from the graceless Corporation was that a report into his conduct was ordered, and it was reported that he had been "guilty of a breach of privilege." The real offence which he had committed, obviously, was that he had been guilty of the heinous one (in the eyes of the Corporation) of, while securing the extra jurisdiction, also protecting himself from being called upon to exercise it without being paid for so doing! This remuneration was secured for him by the Lord Chancellor of the day, and was in amount the same as that given to others on whom the exercise of the new Equity jurisdiction was imposed. Moreover, while, as is shown by the most casual glance at the figures in table "A" in the Appendix, the Commissioner had in the first year doubled, and in each subsequent year more than doubled the Judge's fees earned by his Court, no extra payment for this increase was for years given to him. It is true that when the whole matter came into the hands of professional men, such as the Law and City Courts Committee for the most part are, justice was at length done to the Commissioner, but only after scenes had occurred with the body of the Corporation as to which the reader has had an opportunity of forming a judgment by what we have given in a previous chapter.¹

It had been no fault of Commissioner Kerr's, too, that a Bill had not become law creating an improved procedure in his Court, for we have seen that he had prepared such a Bill for this purpose not long after he had been appointed to the judgeship. This had doubtless not been altogether labour in vain, since

¹ See *ante*, Chap. V., especially at pp. 150, 155, and 161.

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the Commissioner's friend, Lord Westbury, in 1867, by his County Courts Act of that year, made the procedure of the Commissioner's Court subject to the rules governing the practice of County Courts generally, and at the same time changed its name into that of "The City of London Court."

In 1868, a jurisdiction in Admiralty was conferred upon such Courts as might be selected by Order in Council to exercise it. Commissioner Kerr's vigilance and energy again secured that his Court should be one of those selected to possess the new jurisdiction. The experiences of 1865 were repeated, though in a slightly different form. The Corporation once more showed themselves to be *alieni appetens*—in other words greedy for the new jurisdiction—but not "*sui profusus*"—or lavish in their payments. It was not till the Lord Chancellor was taking away the jurisdiction which the Corporation were anxious to possess, but for the exercise of which they were not equally eager to pay, that the latter agreed that they would arrange for the Commissioner's proper remuneration if his lordship would abstain from conferring it upon another metropolitan Court (Whitechapel having nearly obtained it).

It must not be supposed that the exercise of a new jurisdiction, such as that in Admiralty, gave little or no trouble to the Judge who was called upon to exercise it. When, over thirty years later, the present writer went much up and down the river, in order to qualify himself to exercise the Admiralty jurisdiction for the Commissioner, whose habitual deputy he had by that time become, he ascertained that the Commis-

Admiralty Work

sioner had himself taken a similar course when he first became possessed of the jurisdiction, and that his shrewd sayings and observant ways were still well recollected by the old sailor and river folk on the Thames. More than once when inquiring into some subject he was met with the remark, "Ah! that's just what old Commissioner Kerr asked me when he used to come here." But the Commissioner, intimately as they knew each other, had never mentioned to his disciple the trouble he had taken himself to acquire a practical knowledge of his Admiralty work, and in all probability had made no one else aware of it.

From the time when the Corporation left matters in the hands of a committee, and the General Peace, as we have called it, of June, 1869, was, by their good offices, effected between the Corporation and the Judge, the latter's salary was placed at, and from time to time raised to, amounts more adequate to compensate him for his labours than those previously paid. For some years onward from 1859 he appears to have received no remuneration whatever for the great reforms he had effected in the City Court, and the great increase in business, and consequently in fees, which had resulted from it. Till 1865, the Commissioner's salary remained at £900 a year—in other words, at nine-fortieths of the amount which its fees earned—when the Commissioner was first appointed to the Court. Had this proportion of nine-fortieths of the earnings of the Court been frankly and from the first taken as the basis of the salary for its judicial staff, and recognised and accepted all round as the proper basis, much trouble and mis-

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understanding would have been saved alike to the Corporation and to the Commissioner.

During the year 1889 the fees levied by the Court closely approximated to £15,000 (they were, to be exact, £14,839), as is shown by the Table in the Appendix, and they were still rapidly increasing—in other words, the work had become between three and four times as much as it was in 1859. The Corporation naturally desired that it should continue to increase. So they at the end of 1889 came to an arrangement with the Commissioner that the Court should in future have “continuous sittings,” *i.e.*, that it should sit upon all the working days in the week except on Saturday. The experiment was financially a success, for during the next five years (1890–4) the Court's business increased by close upon £8,000 a year.

The arrangement made at the end of 1889 was an unfortunate one. The Corporation could not fairly blame the Commissioner for this, nor could he blame them. Speaking with an experience of several years' work at the City Court to guide him, the present writer does not hesitate to say that no man—not even such a legal Hercules as the Commissioner—could in the Commissioner's time long sit on more than three days a week at the Court with impunity, so great was the mental strain of the rapid work there done, and that if he attempted to do so he would soon suffer in health, as indeed the Commissioner did very soon after he began the effort to do it. The work had already grown too much for any one man. But this was not remembered on either side. The

New Arrangements in 1889

Corporation were anxious to get their "continuous sittings," or sittings on five days in each week, and so long as these were held did not stop to sufficiently consider by whom they could be undertaken. The Commissioner had been obliged, for family financial reasons, to be frugal and thrifty, perhaps to a fault, in his younger days, and never to spare himself any labour which he thought that he could profitably undertake. He did not now pause to consider that he himself was approaching seventy years of age (he was then sixty-eight), and that it must always be a serious thing for a man well past the prime of life to enter upon any serious additional labours. His salary of £2,700, which was the amount that he then and for some years previously was in receipt of as Judge of the Court, was three times that (viz., £900 a year) which had originally been paid to him, and represented with tolerable fairness the additional income which he ought to have received proportionately to the increase in the business. A second Judge clearly ought to have been appointed in 1889 to act subordnately to the Commissioner, but to be paid directly by the Corporation. It should have been this second Judge's duty to sit on at least three days a week in relief of the Judge, who, though then still vigorous, was now growing old, and thus discharge any additional duties which might arise from any of the prospective increase of business. The Admiralty business of the Court, and that which might be done in remitted actions and by the establishment of a Central County Court, to this day remains largely undeveloped.

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Unfortunately, however, none of these considerations were suggested by any one. For some years previously the Corporation had been accustomed to present their Judge of the City of London Court with a handsome gratuity of 100 guineas each year to enable him to enjoy a well-earned autumn holiday—a wise and generous arrangement, most excellent both for the Judge himself and for his Court. The 1889 arrangement provided that the Judge's actual salary should be increased by £500 a year, on the understanding that the annual gratuity of 100 guineas should be given up (thus making the real increase only £395 per annum); and that he should, in return for the increase of salary, undertake to hold 'continuous sittings,' *i.e.*, sittings on five days a week during most of the year, and should at his own expense, and out of his own pocket, provide himself with such assistance as he might from time to time think required.

The result of the actual 1889 arrangement was exactly that which might have been expected from a man of the Commissioner's frugal and energetic disposition. His energy made him think that he could do most of the additional judicial work himself; his thrift and frugal habits suggested that it would be a "saving of expense" to do it. He had no wife whose wise counsel might have guided and restrained him. Consequently, like many another man, he unfortunately overworked himself. At the end of three years this had become so apparent that he "was over and over again urged" by his medical men "to reduce the number of his Court

Sudden decline of Business in City Courts

days." But this he would not do, and "held on," with the result that during 1893 and 1894 he was, as he himself admits, "a martyr to dyspepsia." The "dyspepsia" soon developed into that terrible agony known as "*Angina pectoris*."

That the arrangements made in 1889 did not adequately provide for the business of the Court subsequently soon became otherwise unpleasantly manifest. This continued to follow its normal course till about 1895; and up to that time the business of County Courts largely increased every year both throughout the country and also in the City of London Court. The highest development of such business ever attained to was reached, alike throughout the country and in the City of London Court, during the year 1894. Immediately after this a sudden decline of such business occurred, both throughout the country generally, and in the City of London Court. But while, during the next five years, taken as a whole, there was a slight recovery of business which, throughout the entire country, amounted at the end of the period to an increase of over four per cent. on the County Court business for the immediately preceding period of five years, no similar revival of business took place in the City of London Court. That Court has never recovered from the sudden falling off of business which occurred in 1896, alike there and in the country generally. Not only was there no increase again in business of the old type, but the business in Admiralty and in the number of remitted actions which might have been developed did not take place. The consequence was that at the end

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of the five years concluding in 1900, the total result of the period was, for the first time during the Commissioner's tenure of the judgeship, marked by a considerable decline in business, instead of by any such an increase of 4 per cent. on the previous five years' period, as had taken place in the country generally. It is therefore clear that to find the reason for such decrease we must look for some local causes. It is not hard to discover one.

The arrangements made in 1889 were deficient in that they were sadly wanting in definiteness and finality. Suitors like to know by whom their cases will be tried; in other words, "before whom it will come," as the phrase commonly goes. This in the City of London Court, during the last ten years of the Commissioner's judgeship, they unfortunately never could foretell. If the Commissioner himself were well, it was, for the reasons already mentioned, practically not possible for him to sit at the City Court on five days continuously in each week during all the year round. This difficulty was supposed to be met by his possessing three different powers of appointing some substitute to sit for him. Under the Local Act, he could obtain the assistance of a "deputy" during any sixty days in each year, if the Corporation approved of his having such a power; and it had been, continuously since 1859, their custom to confer it every year. Next, if too unwell to sit, the Judge could, at any time, appoint a deputy of his own mere notion, and without the sanction of the Corporation. Finally, he was, by the General County Courts Acts, from 1867 downwards, empowered to receive assistance

His Retirement considered

from any other County Court Judge who would act for him. Up to November, 1891, he usually had the help of his old ally, Mr. O. B. C. Harrison ("Alphabet" Harrison, as he was familiarly called), to sit as his deputy. On Mr. Harrison's death he obtained the services of another Barrister to act as "deputy" when the aid of one was required.

The confusion in the minds of suitors which was created by this multitude of possible Judges before whom their case might be tried was subsequently made even worse than this.

In 1894 the retirement of Sir W. Charley and the state of the Commissioner's own health caused consideration to be given to the subject of the pensions to be paid to the Corporation's law officers. The Commissioner then found himself, after thirty-six years' service, placed on the same footing as the Recorder and the Common Serjeant, who had only each served about fifteen years. He drew attention to this, and announced that he declined to retire on terms such as those suggested.

In the year 1895, all prospect of the Commissioner's immediate retirement having now disappeared, the Law and City Courts Committee proceeded to make a further arrangement which they doubtless intended should afford him additional help in the discharge of his official duties. In addition to the three modes of appointing substitutes to sit for him which he already possessed under the two powers in the Local Act and that in the General County Court Act, it was decided that yet a fourth power should be created for him. Under a comparatively modern Act

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(the Borough Courts Act, 1870) passed some twenty-five years previously, an "Assistant Judge" was in 1895 appointed with power to sit on a further sixty days in each year if called upon by the Commissioner to do so. By the terms of the appointment the Assistant Judge was not under any obligation to sit when even so desired ; while the Commissioner was under no obligation to ever employ him. Here again was a sad want of finality and definite settlement of anything. The Commissioner intended the arrangement, by which an Assistant Judge was appointed, with power to sit on sixty days in each year, to be in addition and supplementary to the various powers of getting a substitute when he was so desired, which he already possessed. He was unwilling to place himself entirely in the power of the Assistant Judge, by never availing himself of the services of any other of his friends, some of whom were very old ones, by asking them to sit when either their own convenience or his might render them willing to assist him. He naturally felt it would be the more desirable that he should from time to time obtain these, as the Assistant Judge had taken upon himself no obligation to sit when wanted ; and had indeed, as the Commissioner understood, rather expressed (informally) a wish to be left "free." The Assistant Judge, on the other hand, took the view that, whenever *his* services were available, the Commissioner was bound, if he accepted assistance, to employ him and pay him, and must not exercise his powers in favour of any one else, even a friend who might be willing to sit as such, and without payment for so doing. A very painful disagreement

Great falling off in Legal Business

on this point arose between the Commissioner and his Assistant Judge on the former's exercising his old statutory powers in favour of the late Mr. Besley, Q.C. It was renewed both when the present writer sat as deputy—at first gratuitously—and became even more acute when, at the request of his old friend, and in order that the latter might maintain rights that he regarded as valuable, the writer consented to sit for him for payment. It would be of no interest to the public, any more than it would be proper that, under these circumstances, the merits of this matter, or the details of the dispute, should be discussed here.

The appointment of Assistant Judge was made in April, 1895. Hardly, however, had the ink grown dry upon this appointment, when it became clear that such assistance would not be required. That great falling off in legal business all over the country, which has been before mentioned as clearly shown by legal statistics to have arisen about this time, commenced about the Long Vacation of that year (1895). Its existence was recognised very speedily. And during the controversy which subsequently arose as to the number of days on which the City of London Court ought to sit, a letter fully explaining it was early in 1898 addressed to the *City Press* by Mr. A. W. Timbrell, a solicitor of large and long experience, and a member of the Law and City Courts Committee. Quoting official returns, issued by the Queen's Printer, the writer showed that in Birmingham there had been in a year a decrease in the fees earned from £22,464 to £19,930 ; in Manchester one

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from £8,602 to £8,392 ; and at Liverpool one from £9,383 to £8,890. Moreover, to quote the words of the letter, "a decrease of fees prevailed in nearly all the County Courts throughout the country." This general decrease in County Court business was, in the letter, "attributable, in the City of London Court, to the improvement in trade." The effect of the decline in the City Court was, for the year 1896, some £1,761. Under these circumstances, the Commissioner, perceiving from the monthly returns of the Court's business that there was this great falling away, considered that the work of the Court could be well discharged by sittings on three days in every week, and accordingly intimated to the Assistant Judge that his services would not be much required, and suggested his resignation, which, however, was not tendered in accordance with this advice.

The Corporation then fell, according to the Commissioner's view, into an error which too often occurs, and is not uncommon with large public bodies, and confused cause and effect. The Sittings, the Judge said, had been reduced in number because there had been a previous falling off in the business entered in the Court, and there was now not enough of it to occupy more Sittings. On the other hand, some members of the Corporation, and some newspapers, said that the falling off in the business had followed upon, and was in consequence of, the reduction in the number of the Sittings. The Corporation, through their Law and City Courts Committee, at first took this latter view. They obtained an opinion from Sir

The Sittings of the Court increased

Edward Clarke, Q.C., and Mr. Danckwerts, that the Local Act still gave them a right to fix the days on which sittings of the Court should be held. The Commissioner, on the other hand, pointed out that, as he contended, a provision in the Act of 1865 had vested the right to fix the sittings of the Court in him, and that he had accordingly done so for the thirty years which had elapsed since. Acting upon a supposed right which, according to the opinion of Sir E. Clarke and Mr. Danckwerts, was possessed by them, the Common Council, on the recommendation of their Law and City Courts Committee, proceeded to fix daily sittings during certain months for which the Commissioner had only appointed about half the number of sittings. The experiment was not successful. The Commissioner convinced the Law and City Courts Committee, by returns of the number of hours during which the sittings had lasted, both when he had himself fixed daily ones and when the Corporation had done so, by the corroboration of his views by testimony of the Registrar, that there was not sufficient business to occupy such frequent sittings, and by arguments similar to those contained in Mr. Timbrell's able letter already abstracted. On these materials, the Committee came to see that there was at that time (1896) no necessity whatever for daily sittings. Communications and conferences took place between them and the Commissioner. As the result of them, the Committee advised the Corporation to compromise matters with the Commissioner by agreeing with him that sittings of the Court should be held upon four days in the week only. It will be remembered that

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the City authorities had originally demanded sittings on five days in each week, while the Commissioner had fixed them for three days a week only. The compromise recommended by the Law and City Courts Committee was adopted by the Common Council at the end of July, 1897. During the remainder of the Commissioner's tenure of office sittings of the City of London Court were accordingly held upon four days in the week only.

The enormous increase in the business of the Court during Mr. Commissioner Kerr's tenure of its judgeship was, as has been seen, not accompanied by an increase in the Judicial Staff of the Court. The Commissioner continued to be responsible for the work single-handed, with only such casual assistance as he might from time to time obtain from brother Judges under the County Court Act of 1888; from friends and others employed to sit as deputies; and, after 1895, from the Assistant Judge if he chose to avail himself of his services. In case of illness he had an unlimited power to appoint deputies to supply his place.

As regards the Permanent Staff of the Court, however, matters were wholly different. On the Commissioner's retirement in 1901, after forty-two years' service, a brief account of the great increase in the staff of the Court necessitated during his judgeship, was given in a valedictory notice of the Commissioner which appeared in the *City Press* of August 7, 1901. An extract from that notice tells its own tale. It says that:—

It may be interesting, as showing the development of the Sheriff's Court or, as it is now termed, the City of London Court, to mention

Courts' Permanent Staff

that, on the Commissioner's appointment, the business was transacted in a comparatively small room on the first floor of a very small building, whereas to-day the cases are heard in two of the finest and best courts in the country, and the new premises were erected at a cost of upwards of £24,000. In the year 1859, the staff comprised the Registrar, seven assistant clerks, a high bailiff, and five subordinate officers; whereas to-day there are the Registrar, twenty assistant clerks, a high bailiff, eleven subordinate officers, and an official shorthand-writer. In 1860 the number of actions heard was 9,970, the fees levied were £4,265, and the amount sued for was £32,911. Last year (1900) the number of plaints issued was 35,475, the fees levied were £18,758, and the amount sued for was £206,125.

Amongst the permanent staff were many who, like Mr. George Mitchell, owed their positions to the kindly interest taken in them by the Commissioner. He never failed to exert his influence to procure an appointment in the offices of the Court for either a friend in actual need or a man really in distress whom he thought able to discharge the duties and worthy of help.

Complaints about the defects of the building in which the Court was held that had arisen as early as 1859, and so well described in the letter in 1862, are set out on an earlier page.¹ They, however, continued to be unremedied for many a long year, and notwithstanding the great increase in the business. At length, in 1882, a private Act of Parliament was obtained, giving the Corporation power to use some of the moneys of the Unclaimed Suitors' Funds in rebuilding the Court, much in the same way as use had been made of a similar fund in the High Court to erect the Royal Courts of Justice. After con-

¹ *Ante*, Chap. V. p. 146.

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siderable negotiations as to the site, and afterwards about the plans, the foundation stone of a new Court was laid by Lord Chancellor Halsbury on the 23rd of November, 1887, as recorded in the following issue of the *Law Times*, and the building was opened about a year afterwards, viz., on the 6th of December, 1888, by the then Lord Mayor, Alderman Whitehead, as is recorded on a brass plate erected in the entrance hall. In 1893 the falling-in of a short lease, the extravagant price asked for which had prevented the earlier erection of it, an extension of the building was begun. The foundation stone for this extension was laid by Mr. William Japhet Tickell, the then Chairman of the Law and City Courts Committee, on the 19th of July, 1893, and the extension having, like the original structure, taken about a year to complete, was opened on the 2nd of April, 1894, by Mr. Claudius George Algar, that year's Chairman of the Law and City Courts Committee, as recorded on another brass plate, which is placed in a position where it is but little seen by the general public. The new City of London Court is certainly now by far the best County Court in London. But when first opened it, like all new buildings, had some defects which have since been remedied. Amongst other mistakes then made the jury were at that time placed almost behind the Judge and complained that they could not hear. Said Commissioner Kerr with good-humoured sarcasm, "The architect of this Court has heard that Justice is blind, and so he appears to have jumped at the conclusion that she is deaf also."

The completion of the development of the Court

His Fortieth Anniversary

was, as has been seen, reached in 1895, and considerably before the time the Commissioner had completed his forty years' service as a Judge. On his doing this, he was finally congratulated upon it by the advocates practising in the Court. The following is a report of what then took place, as recorded in the *City Press* of May 6, 1899:—

MR. COMMISSIONER KERR'S FORTIETH ANNIVERSARY. CONGRATULATIONS OFFERED BY THE SOLICITORS.

Yesterday many members of the legal profession attended at the City of London Court to offer their congratulations to Mr. Commissioner Kerr upon completing his fortieth year as Judge of the Court, he having been appointed on May 5, 1859. Mr. JOHN FARNFIELD, who acted as spokesman, asked to be permitted, on behalf of his friends around him, to congratulate the learned Judge. He could well speak, as he said, as the Senior Member of the Profession, for he found that he signed the roll of the Court as one of the Practitioners so long ago as 1863, having been under articles when the Commissioner was appointed. The Court, at that time, did quite a small business, for there were only 11,596 complaints issued, and the income was about £4,100. Last year, the complaints numbered 35,935, and the Court's income was just under £30,000. During the past forty years there had been great changes in the administration of justice, notably in instituting default summonses. When Mr. Charles Morgan Norwood, the member for Hull, was bringing about the institution of default summonses, he told him (Mr. Farnfield) that he was much struck with the legal acumen displayed, at the time, by the gentleman whom he was now congratulating. During the thirty years that the Court had had Admiralty jurisdiction, 6,315 actions had been entered, giving an average of something like 210 per annum. The business generally having increased, of course the staff had had to be strengthened, and it now numbered 40, only 14 officers having been required in 1859, the year of the Judge's appointment. Many of the gentlemen who had practised before His Honour had risen to high positions in the legal world, amongst others being Mr. Justice Bruce, Mr. Justice Bucknill, Mr. Justice Phillimore,

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and Sir Charles Hall, the Recorder, all of whom had attained to places of distinction partly through what they had learned at the City of London Court. He was pleased to be able to congratulate the Judge on being in robust health, and on the fact that his intellect had not been dimmed by the many years' service he had rendered to the Corporation. Some of the remarks which he made from time to time were caustic, and they were felt severely now and then by unfortunate members of the profession, and the public too, for that matter. Practitioners at any rate knew, however, that when the lash was applied it was for their good, and for the good of the Court. Rumours of resignation abounded on all sides, but he, for one, did not believe that the Judge had the slightest intention of resigning. Why should he? When he did not want to sit, and wanted a change, he could appoint a deputy. The Corporation had borne excellent testimony to the Commissioner's powers, for they had decided that, when he went, it would be necessary to have two young men to do the work, which he found himself quite able to do, although he was considerably past seventy years of age. In conclusion, he could only say that, if the time ever did arrive for the Judge to retire, he would be able to look back on the many years' association with the Court, and remember how useful it had been to many people. Mr. GEORGE KEBBELL, as a practitioner for thirty years, added a few words of commendation. Mr. STEPHEN LYNCH, on behalf of the Bar, cordially endorsed all that had been said. They all learned a great deal at the Court, he said, and if the Judge did retire it would be to the lasting regret of all concerned.

Mr. COMMISSIONER KERR thanked the gentlemen who had spoken so kindly. They had taken him quite by surprise, he remarked, because, although he knew that that day was the fortieth anniversary of his election to the Court, he did not anticipate that any notice would have been taken of the fact. Mr. Farnfield had spoken in far too flattering a manner of himself. The business had greatly increased, and the jurisdiction of the Court had greatly extended, while he had been the Judge. They must not lose sight of the fact that business in London generally had vastly multiplied during the past forty years, and to that circumstance was to be attributed to some extent the increase of the Court's business. He did not presume for one moment to think that he had personally done much to effect it. He had endeavoured to do justice, to the

Celebrates Fortieth Anniversary

best of his ability, in every case, but he knew he was not infallible. He had a good many deficiencies of one kind and another. County Court Judges had not the advantage of knowing what the issue in each case was, for in the County Court there were no pleadings. A great deal of trouble had to be gone through sometimes in eliminating the facts and ascertaining what the real issue was. In so doing one's patience was often much tried, and, speaking for himself, perhaps at times he had showed impatience. If at times he had been, as was said, a little caustic, it had been through no ill-feeling whatever. He felt very much the honour which had been done to him in addressing him on that occasion. While he had always been actuated by the simple-minded intention of doing what was right, probably he had not always succeeded. He would never forget what had been said that day, and he could only hope that, during the short time that he might remain there—whether it would be short or long he did not for the present know—he would continue to have the confidence of the gentlemen who practised there, and they would make allowance for his deficiencies. The longer one sat as a Judge the more one became conscious of one's deficiencies. He thanked one and all very heartily for coming there on that occasion.

The business of the day was then proceeded with.

CHAPTER XII.

THE COMMISSIONER'S FINAL BREAKDOWN, RETIREMENT, AND DEATH, WITH SOME APPRECIATION OF HIS LIFE, WORK, AND CHARACTER.

THE same year (1899) as in May saw the celebration of the fortieth anniversary of the Commissioner's appointment to his judgeship had already, in its February and March, seen arrangements made as to the duties and emoluments of his successors. In its last month it witnessed the removal of an obstacle created in the preceding May, which had probably alone prevented his retirement upon that fortieth anniversary itself, or at least as soon as he had celebrated it.

The arrangements for the discharge of the duties of his Court by a substitute in his absence had never been entirely comfortable or satisfactory to the Commissioner since the death of his old deputy and friend, Mr. O. B. C. Harrison, in November, 1891. Very soon after this event, indeed, a Barrister known to his son, but with whom he was himself till then but little previously acquainted, had commenced to act as deputy, and continued for some time so to do. When the pressure of business was great at the Court the Commis-

Health interferes with duties

sioner had, as has been seen, in order to obtain sixty additional days which he could, if necessary, make use of, and for other reasons which it is unnecessary to discuss, had arranged that the Barrister who had been recently acting as deputy should become Assistant Judge. Much sympathy, perhaps, had never existed between the Commissioner and his Assistant Judge, and when, within a few months afterwards, the serious and sudden decline in the business of the Court furnished a reason, he had at once given his new Assistant Judge notice that his services would probably be but little required, and advised his retirement. Subsequently, when the "four days a week" compromise was made with the Corporation, the history of which has already been described, the unfortunate claim which has been mentioned before was advanced by the Assistant Judge, and pressed by him in a way and to a degree which unhappily greatly irritated the Commissioner, and made him less inclined than ever to concede the right which he, justly or wrongly, thought that justice to himself did not permit him to recognise.

The arrangement that his Court should sit upon four days in each week was, however, scrupulously carried out by the Commissioner. Within a few months after the arrangement of July, 1897, had imposed upon him the duty of providing for sittings of the City Court being held on four days a week, it gradually began to grow manifest, alike to his friends and himself, that the Commissioner was not equal to the work. It had consequently to be largely discharged by the aid of his friend, Judge Snagge, a well-known Judge

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who still occupies a seat upon the County Court Bench ; and of a deputy from time to time appointed to undertake it. As time went on the need for assistance became greater and greater. When free from the attacks which from time to time seized him the Commissioner could perform his duties with vigour, and with satisfaction to the suitors as well as to himself. But he could no longer rely with any confidence upon being able to discharge such duties. Thus on one occasion he had returned from Paris, whither he had gone for a change and with the hope of benefiting, in an apparently vigorous state. Said he, with the humorous playfulness which always characterised him when well, "Now, Pitt, you can knock off, and go to-morrow and spend a happy day at Rosherville, and several if you like, for I'm going to do all my own work for the next fortnight after all this holiday." But the following midday the writer was hastily summoned from the Temple, and proceeded to the Court to find the poor Commissioner writhing with agony in his arm-chair under a frightful attack in his chest, and utterly unable to complete the day's work, only a very small portion of which remained to be done. On another occasion, after leaving the Commissioner one afternoon, with an announcement from the latter that he felt he could do his own work for several days to come, a telegram received at breakfast next morning told that he was unable to even come to Town that day. Each of such attacks as these usually incapacitated the Commissioner for days together, and left him exhausted and weak for a considerable time after they had passed away. An occasion recalls itself

A Pension Suggested

when, the renewal of his power to appoint a deputy being temporarily delayed, the Commissioner had arranged to take his own Courts daily till it was obtained, but was taken suddenly unwell, and showed symptoms which made those about him apprehensive lest a paralytic stroke should happen to him. In this emergency he was rescued by the ready thoughtfulness of the kindly Judge Snagge, who, as soon as he became aware of the disquieting condition of things, gave up the Court of his own which had been fixed for the morrow, sat in place of the Commissioner, and sent a deputy to discharge his own work.

Although the state of matters had not then yet become as serious and aggravated as it afterwards grew to be, yet as early as in the spring of 1898—in other words, only a few months after the sittings on four days a week had been arranged for—negotiations commenced for the Commissioner's retirement upon a pension. As a result of these negotiations the amount of this pension was agreed at £2,700 a year. In May, 1898, the Law and City Courts Committee brought up a report recommending that this pension should be granted. But upon its coming up at a meeting of the Corporation a Common Councillor moved that it should be only granted on condition that such pension should be accepted, and that the Commissioner should retire within the ensuing six months. At the suggestion of Mr. Timbrell, whose sensible letter on the decline of the Court's business has been mentioned in the previous chapter, the mover of this condition consented for the Commissioner's retirement to be enlarged to twelve months. In this modified form the added con-

Commissioner Kerr

dition was carried, and made part of the terms of the grant of the pension. Great was the indignation of the Commissioner at what had been done on returning from Paris, whither he had gone for the sake of his health, and with the full intention of retiring upon his return. "I will not," he said, "be kicked out on twelve months' notice after nearly forty years' service." His indignation was made none the less by the fact that the Common Councillor who caused the obnoxious condition to be added had been an unsuccessful litigant in the Commissioner's Court, and thus was open to a suspicion of having acted from personal dislike. Probably such was not the case; but doubtless the persecution to which an unsuccessful litigant in his Court had subjected him in the early days of his judgeship, as described in an early chapter,¹ made the Commissioner exceedingly sensitive upon the matter. At all events, he indignantly declined to retire at a time thus dictated.

In February, 1899, however, the Corporation anticipated that the Commissioner's retirement would take place about the time of the celebration, on the approaching fortieth anniversary, on May 5th, and consequently within a twelvemonth after the adoption, on May 26, 1898, of the condition which had proved so obnoxious to their old servant. Accordingly they, early in February, 1899, formally referred it to their Law and City Courts Committee to report whether any and what steps were necessary or desirable to be taken in anticipation of next aversion of office of Judge of the Sheriff's Court. This Committee, in March,

¹ See *ante*, Chap. V., at p. 154.

Committee's Recommendations Adopted

1899, reported to the Common Council that a sub-committee of their body had resolved unanimously and they themselves accordingly recommended :

(1) That two Judges, with a knowledge of Admiralty, be appointed with Salaries of £2,500 and £2,000 respectively, in lieu of all fees, present or future.

(2) That the Lord Chancellor be informed that in fixing so large amounts the salaries are assigned on the understanding :

(a) [That there are to be daily sittings.]

(b) That the salary is, in each case, a maximum one.

(c) That the Judges retirement allowances are the same as ordinary County Court Judges, namely, two-thirds of their salary.

The Corporation adopted these recommendations.

The Commissioner, however, though these arrangements had been made, still remained at his post, and celebrated the fortieth anniversary of his appointment as recorded in the preceding chapter.

It soon, however, became again apparent that the work of the Court was too much for him. He took a long holiday in the autumn of 1899, and then returned to work at the Court.

In December, 1899, the pension of £2,700 a year, previously offered, with the objectionable condition appended to it that the Commissioner's retirement should take place within a year was, with excellent judgment and good taste, again granted, and this time unconditionally.

Though this had been done, the Commissioner was

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still very loath to finally and altogether quit the Court in which he had laboured so long. He came to a determination, early in the following year, to try the effect upon his health which would be produced by a prolonged holiday in the early spring, and particularly whether a certain "Swedish treatment," which his medical advisers recommended, might permanently relieve him. Early in the year he accordingly proceeded to Paris to there undergo it. The relief afforded by it, however, ultimately proved to be of a very temporary character. Indeed the work of the Court during the whole of the year 1900 was only discharged by the aid of Judge Snagge and of the present writer. This condition of matters was felt by all parties to be really unsatisfactory. Judge Snagge could not be expected to continue for an indefinite period to sacrifice his entire leisure to the service of his friend. The writer, though so far successful in his conduct of the business of the Court that on one occasion (November 7, 1900) the *City Press* was able to kindly boast that the law administered in the Court was still so good that no less than three of his decisions had been affirmed on appeal within one week, nevertheless felt himself to be in a somewhat anomalous position. The Commissioner and his friends all agreed in feeling that some other and more permanent arrangement must be made for the future.

Accordingly, early in the year 1901 the Commissioner arranged to take another and a prolonged holiday, and determined that should he on his return still find himself unequal to discharge at least the greater portion of the work of the Court, he would

His Pension Finally Settled

quietly resign its judgeship. In pursuance of this determination he remained abroad during the whole of the spring and early summer of the year 1901.

Just previously to the Long Vacation of 1901 he came back to London, but his health was, alas! still not robust. He was capable of doing a little light work, on a day or two in each week, to the satisfaction of the suitors, and with that great pleasure to himself which occupation, so far as physical strength will permit it to be engaged in, always gives to an active, energetic mind. But he was conscious that such service as this would not satisfy his critics in the Corporation. So he reluctantly permitted negotiations to be recommenced with the Law and City Courts Committee of the Corporation. That body was still in a position to resume these, as a reference to them by the Court of Common Council to answer and report whether continuous sittings could again be arranged for remained hitherto uncomplished with and undischarged. In the result, the Committee agreed to report to the Common Council that they recommended that the Commissioner should be offered a pension of £3,000 a year. Large as this sum appeared it was, in truth, no more than the Commissioner's due. The report of March, 1899, recommended the grant, as a pension, of two-thirds of the salaries of the judges, which amounted to £4,500 a year. He had for years discharged the work of two judges; and had, in truth, earned their full pensions well.

The amount of the pension granted, however, was but £200 a year short of his full pay. Moreover,

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it was given in addition to the £300 a year of which he was already in possession in respect of his past services at the Old Bailey. The Commissioner accordingly, on his part, agreed that he would accept this pension, and offered, on the Common Council confirming its grant, to retire at Michaelmas, 1901.

The wrench of leaving the Court where he had worked so long was a very painful one to the old man. To feel that his life's work is now done, and that he has nothing left in this world but to patiently await the end, must always be a sad and terrible thing to any man. To a man of the deeply reflective and religious mind of the Commissioner, we may be sure that thoughts such as these often presented themselves.

Yet he did not murmur or complain. Once, and only once, did a remark escape him which betrayed how deeply he felt the parting. It had been reported to him at the end of July, 1901, that the Court of Common Council had adopted the Committee's report, as they did on July 25, 1897, and that even his enemies on the Corporation had acquiesced in it. Said he, "Ah! *they* have done it to get rid of me—and they have too! For I shall be like——" and he here recalled a late Chief Clerk in Chancery who had been his friend in his early years. "He lived on till some fool of a doctor told him that he must give up work, and then he retired into Wales, and died in six months. I think I can hold on twelve." If, even at this eleventh hour, such a suggestion had been brought before them by any one, the Corporation would have been pecuniary gainers by some arrangement similar to that not long ago made with a celebrated organist

Commissioner Resigns

at Leeds, and the Commissioner's life would probably have been prolonged for many years. At Leeds, when the famous musician grew too old to regularly discharge his duties, he was told with much kindly consideration, "You are still our officer, and responsible to us for the discharge of the duties of your office : but we have provided an assistant to aid you in your old age, and you can have recourse to his services whenever you like." The old servant who was thus treated still lives. But nothing of this kind being suggested to him, the Commissioner determined to retire almost directly—in short, at the close of the then coming Long Vacation.

The Press and friends talked of presenting a testimonial to him, and it was the general wish of the legal profession that there should be a final farewell. But the Commissioner would have none of these things. Within a few days after the grant of the pension he quietly left Town, again appointing the writer to sit as his Deputy during August, and also at so many Courts as were appointed for the portion of September, which fell before the 27th of that month. The usual sanction to such an appointment had already been given by the Corporation in the form which had been employed for more than forty long years empowering the Judge to appoint a Deputy for two months during the year.

On the 18th of August, 1901, the Commissioner formally resigned his office by a writing concluding "this resignation to take effect as from Michaelmas next." The letter which conveyed the resignation to the Town Clerk of London was, singularly enough,

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dated from Glasgow, where the Commissioner had been born eighty years previously and the 'home of the *Alma Mater* whose worthy educational son he had been.

On September 29, 1901, the forty-two years' judgeship of the last elected-Judge of the ancient Sheriff's Court of London ended, and he ceased to hold the office to which he had been elected in 1859.

The Commissioner's resignation was accepted on September 19, 1901. On that day week the Corporation passed a resolution to the effect that the Court of Common Council could not allow the Commissioner's retirement to pass without placing upon record its sense of the excellence of the services he had rendered during his forty-two years as Judge of the City of London Court, and expressive of a sincere hope that he might live long to enjoy his well-earned retirement. The mover of the resolution, Mr. Lee, the then Chairman of the Law and City Courts Committee, eulogised the Commissioner's work at the City Court. Mr. Lile, the seconder, said that the City would not look on the Commissioner's like again.

The original, in illuminated form and duly signed as an original, was directed to be sent to the Commissioner.

No testimonial or farewell ceremony in its Temple had been permitted to mark the termination of the forty years' service to justice which had been given by the Commissioner. Yet the thoughtful care of his only daughter secured that the once familiar features of her father should not be forgotten in the

His Retirement

Court over which he had so long presided and that they should be known to future generations.

At the same Court of Common Council as that at which the resolution was adopted that was presented to the Commissioner as an illuminated original, an offer was accepted from Miss Kerr to present to the Corporation a bust of her father. The bust was the work of Mr. J. Nesfield Forsyth, and the Commissioner had sat for it in 1897. It had been exhibited at the Royal Academy and had received favourable mention. It is now placed in the City of London Court in a niche formed for it on the wall in the left-hand side when looking towards the Bench. Beneath it is an inscription stating that its subject was Judge of the Court 1859-1901, and that the bust itself was presented by his daughter, Miss Elizabeth Malcolm Kerr.

Numerous newspaper paragraphs and articles about Commissioner Kerr's characteristic methods and his wise and witty sayings appeared so soon as it became generally known that his retirement, which had been many times announced as about to occur, had now actually taken place. Indeed, hardly a newspaper of importance in the three kingdoms was silent about the "City Cadi" and his sayings and doings. Not a few of the Continental papers also made mention—more or less full—of the event. Amongst these many interesting notices may be mentioned as particularly interesting those which at that time appeared in the *City Press* (August 7, 1901), the *Daily News* (September 26, 1901), the *Standard* and the *Daily Telegraph* (September 27, 1901). Some time subse-

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quently these were supplemented by an article which gave some further anecdotes which was contained in Mr. T. P. O'Connor's lively little paper, *M. A. P.*

Many kind letters of farewell were received from men who had been in various ways associated with the Commissioner during his long and active career, as well as from some of his admirers amongst the general public. Of the first-named class of letters the following will, it is thought, be read with interest.

Lord Brampton had, as plain "Mr. Hawkins," in his early days at the Bar, often appeared in the Commissioner's Court. Later on, when a Judge and "Sir Henry" Hawkins, attendance at the Old Bailey had been a favourite method of discharging his judicial duties. He wrote a kindly letter as follows :—

HOTEL SPLENDIDE,
LUGANO SUISSE,

September 29, 1901.

MY DEAR KERR,—I learn from the daily papers that on and from this day you have determined to retire from the duties and cares of judicial life. After a period of forty-two years absolutely devoted to the interests of justice, during which you have ever striven with all your strength to administer the law, so far as it permitted you, with good sound sense according to its spirit, with strict impartiality, and with a strict sense of duty, you have earned the rest and repose which I trust may be yours for many a long year, with health and vigour to enjoy them. But, like myself, I dare say you will find the necessity for some congenial occupation.

The authorities are right in appointing two new Judges to do the duties you discharged singly, for you did the work of two. All health and happiness to you, and with my kindest regards and best wishes,

Believe me, my dear Kerr,
Most truly and sincerely yours,
BRAMPTON.

Letters Received on Retirement

From Lord Alverstone, the Lord Chief Justice of England, who had, as a junior Barrister, like Mr. Justice Phillimore, been often before him in Admiralty cases, he received the following letter :—

HORNTON LODGE,
PITT STREET, KENSINGTON, W.,

September 29, 1901.

DEAR COMMISSIONER,—for I can use no other name,—I cannot allow the notice of your retirement to pass without sending you a few lines to assure you of my hearty good wishes and my hope that you may long live to enjoy your leisure. You will remember that from 1868 to 1878 I was very constantly in your Court. I often look back on those days with much pleasure. You taught me many things, and among others I learned to appreciate the conspicuous activity of mind with which you got through your work with thoroughness and judgment. I trust we may meet sometimes, and let me again assure you of my esteem and regard.

I am faithfully yours,

R. M. Kerr, Esq., LL.D.

ALVERSTONE.

The late Sir John Monckton, who had been for many years the valued and trusted Town Clerk of London, also addressed to the Commissioner a letter, dated August 14, 1901, which may be read as representative of the feelings of his brother officials towards the oldest servant of the City, as well as expressive of his own. It is entirely in the handwriting of the late Town Clerk himself, and not in that of a clerk, with merely the Town Clerk's official signature annexed by himself. It related to certain formalities necessary in connection with the Commissioner's pending resignation, and then concluded with an expression of "sincere personal regret at the severance of our long colleagueship."

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Shortly after the arrangements for his retirement had been completed the Commissioner returned from Scotland to the neighbourhood of London. During the 1898 negotiations for the £2,700 a year pension an opportunity had occurred to him of disposing of the house in Chester Terrace, Regent's Park, in which he had till then resided during his tenure of the judgeship. He had embraced it and sold this house. In its place he had gone into a small house at Northwood as a temporary residence and depository for the moment of such belongings he had not cared to part with. When, on his return from Paris, he found that in his absence the obnoxious condition that to obtain his pension he must retire within twelve months had been annexed to the grant of it, he continued to reside in this small house pending a more satisfactory settlement. It still was his only fixed place of residence when his retirement did actually take place at Michaelmas, 1901.

There, in retirement, he amused himself in going over his papers, and in inserting prints in editions of such books as he considered to be worthy of the trouble. In journeys to London, which were frequent with him, he maintained his familiarity with well-known shops for "picking up" old engravings and "curios," or possibly now and then a good picture. At all times in his life the Commissioner had taken great interest in archæology, and often while on holiday was engaged in some quaint, old-world town on the Continent. After his retirement, Continental trips were still often enjoyed by him, and journeys to his native town and to the neighbourhood of the

His Occupations in Retirement

original home of his family in Ayrshire were not infrequent, and a great delight to him.

No member of his family permanently resided with him, nor did he take up his abode permanently with either of them. They had made domestic arrangements of their own which they could not well break up. He frequently, however, visited his only daughter in the Isle of Wight, where she had made a home for herself; and she, on the other hand, visited her father at Northwood. There he had the comfort of a faithful housekeeper and companion in the person of a widow lady, who attended to him with care as great as an affectionate daughter could have bestowed on him, alike when that daughter and other members of his family were around him, or in their absence. Her devoted services to the Commissioner have, it is pleasing to record, been since his death handsomely and substantially recognised by his family, in accordance with the last wishes of the Commissioner, he having been content to die intestate after disposing of the bulk of his property by making provision in his lifetime for the claims of relatives and others upon him.

Many a pleasant hour has the writer spent in this house, chatting with the Commissioner on matters of common interest alike to the latter and to himself. The Commissioner was a most agreeable companion, and took a keen interest in every subject engaging the attention of the day, as well as in "Law." Tales with a touch of humour in them greatly delighted him down to the last of these visits.

This occurred at the end of August, 1902. The writer left Town for a distant visit in the Lake

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Country, and on his return after a fortnight's absence felt a little uneasy about the Commissioner. A magazine article, in which, as they had discussed it together, he knew that the latter took great interest, was returned without remark. This was a most unusual occurrence since the Commissioner used never to hesitate to emphatically express either high approval or dissent. Moreover, a half-formed plan that they were to go together to enjoy a day's trawling in a quiet half-town half-village in Essex passed unnoticed. To write to the Commissioner to "remind" him, or to go down to lunch with him, as was the usual visit, or even to go and see him without some sort of hint that to drop in would not be unwelcome, would be distasteful to him. It was one of his peculiarities that he never would send any one (unless he particularly disliked them, and so felt bound to be formal) an invitation couched in the language usual with most people, and that he resented what he regarded as intrusion, more particularly if he were unwell. Presently a broad hint to stop away for the present arrived from the Commissioner. It was in the shape of a letter dated on 7th November from the lady before referred to, and written by her by the desire, if not at the dictation of the Commissioner, and stated that he was confined to the house by a very bad headache, but when he was better would be glad to see the present writer at lunch whenever he could come down. This, really of course, meant do *not* come just now. The writer did not obtrude himself, but felt uneasy. Within a fortnight the news reached him that his dear old friend the Commissioner was dead.

Sudden Collapse and Death

After the letter he had grown worse and death had occurred within the period named.

As with many a strong man before him, the collapse had at last come suddenly. A great failing had come upon him not long after his return from his autumn visit to Scotland; his strength had very perceptibly and painfully grown less; a slight paralytic stroke had fallen upon him, and within a day or two the end had peacefully come on Friday, November 21, 1902.

Thus he had died, not, indeed, within the year which he had named in the one murmur which he had given expression to in the writer's hearing as likely to be the limit of his life, but about seven weeks after its close.

The death, even in retirement, of one who had till so recently filled such a prominent place in the eyes of the public, and whose words had till lately been in the ears of the world, did not pass unnoticed. The press throughout the kingdom remarked it and wrote upon it.

Appreciative mentions of the late Commissioner of course were made in the Court, whose judgment-seat he had so long filled. We learn the following from the *City Press* of November 26, 1902 :—

At the sitting of the City of London Court on Monday, Judge Rentoul, K.C., in referring to the death of Commissioner Kerr (the public standing the while), said : Since this Court last met the late Judge of the Court has, as we know, passed away. It would be wrong for this Court to meet without taking notice of that fact. For forty-two years he sat here, and gained for himself a very high reputation. The Lord Chief Justice, when he was receiving the Lord Mayor, thirteen months ago, on the first occasion on which Judge Lumley Smith and myself attended with the Corporation as Judges

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of this Court, referred to the late Judge in terms of high eulogy, and said he hoped that the two men who were appointed to take his place would preserve the high traditions which the Court had previously gained. Well, the late Commissioner was, as we know, and as the members of the Bar can appreciate, undoubtedly a great and a profound lawyer. He was nearly the oldest servant of the Corporation of London. He had seen all the high officers who started with him at the beginning of his career pass away. I did not know the Commissioner privately. I only knew him through practising occasionally before him in this Court. By those who knew him privately, and most intimately, I am told that it was in that capacity that they liked him best, and the longer they knew him the more they liked him. His rapidity of decision in Court was undoubtedly unequalled on any Bench in this country. In spite of that rapidity his decisions were remarkably correct. Probably few Judges were more frequently absolutely right in the opinion of those advocates and Counsel against whom for the time being he decided. His desire to do justice was admitted by all, and his great sympathy with the poor was known to all who had any connection with this Court, or who read the proceedings of the Court. His manner was, as we know, a little brusque, and sometimes he was a little severe on the advocates who appeared before him ; but it was remarkable that he never bore malice—even where advocates were tempted to reply in coin such as they had received from the Bench. His life was a singularly successful one, as we know, and there was one characteristic that we all must especially admire—and that was the kindness and sympathy that he felt towards his own fellow-countrymen. A man can be perfectly just and impartial in his dealings between man and man, and at the same time can bear tender feelings towards that land to which he happens to belong, and where he spent the brightest and finest part of his life—his boyhood. The late Commissioner's sympathy and kindness towards his fellow-countrymen were well-known throughout this City. His death has very little of the sadness and pathos that attaches to many a death, because it comes at the close of a long, successful, and healthy life. His life was distinctly a success from all points of view. It would be idle to say that he might not sometimes have carried his very virtues to excess—that his desire for speed might not sometimes have led litigants to feel that they would like their cases to have been heard at a little greater length. There

Appreciations Spoken at City Court

is no Judge who has not been criticised, and there will be no Judge who will not be criticised for his decisions. Probably the late Commissioner escaped criticism as much as any of us are likely to do. All that we can say now that he has passed away is that it should be the desire of every man occupying any judicial office in this country to stand at the end of a long career as high in the public estimation as the late Commissioner.

Mr. F. A. Wootten, the senior member of the Bar present, said he could speak from personal experience of the late Commissioner. He could safely say that the watchword of the late Judge was "Efficiency throughout." He was a strong Judge, and a strong man; and certainly was no respecter of persons. He undoubtedly gained the universal respect of every one who practised before him, and he did not think he would be saying too much if he added that he won for himself their affection and esteem.

Mr. George Mitchell (who represents the Registrar in the Judge's Court) remarked that, after serving at the Court for thirty years under the late Commissioner, he entertained for him a feeling of respect and regard—and, he might add, affection.

Mr. J. E. Sly (the High Bailiff) felt that he could speak as a personal friend of the late Commissioner. He wished to say that he had always found him most kindly and thoughtful in all that he did. His (the speaker's) knowledge of the late Judge's carefulness in looking after the interests of those whom he thought were in the right was very great, and it added considerably to their admiration of him.

Judge Rentoul added that he was very pleased to receive the testimony of Mr. Mitchell and Mr. Sly, who had had exceptional opportunities of knowing the Commissioner. He thought that it would not be out of place if a short message of condolence, or a vote of sympathy, were sent to the Commissioner's daughter and his sons. It would be signed by the Judges and by all the officials of the Court who desired to put their names to it.

On taking his seat in Court yesterday, in the absence of the Registrar, who was attending the funeral of the late Commissioner, the Assistant Registrar (Mr. E. B. Tattershall) said: I think this is a fitting opportunity for paying a tribute of respect to the memory of the late Judge, and for expressing the sense of regret experienced by the officials of this Court on hearing of his decease. Although

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he had ceased to be our chief for some time before his death, his memory is still green, and it seems difficult to realise that he has ceased to preside here for more than a year. The Commissioner was a remarkable man in many ways. He was no respecter of persons—an attitude of mind which is highly desirable in a Judge. Sometimes severe, and on occasions a hard-hitter, as some of you may remember, his brusqueness and assumed severity concealed a really kind heart, and a sincere desire to do justice and right to all. There can be no second opinion as to his great abilities. They were undeniably great. His knowledge of law, his common sense, and his ready grasp of material points in a case, together with his profound knowledge of human nature, and the celerity with which he conducted the business of the Court, rendered him more or less of a marvel to those who listened to him. I venture to think that his memory will not easily fade, and that our recollections of him will not be unkindly ones. I am sure you will join with me in expressing deep sorrow and regret that he has now gone from amongst us.

Mr. T. H. Aldous, solicitor, in reply, said he fully concurred in the expressions of opinion that had fallen from the Assistant Registrar. He (Mr. Aldous) wished to testify to the unvarying kindness and courtesy he had always experienced at the hands of the late Judge.

On Tuesday, November 25, 1902, the late Commissioner was being laid to rest in Northwood Cemetery, close to his intimate friend and medical attendant, the late Dr. Lennox Browne. The death of the latter a few weeks before his own had doubtless somewhat hastened the former's own end. While the funeral service at Northwood was in progress, a memorial service was simultaneously held at the church of St. Lawrence Jewry.

An appropriate and eloquent address was given on the occasion by the Rector. His striking words then spoken well described the Commissioner's character.

Appreciation by City Rector

And this is the more remarkable seeing that no intimate acquaintance ever existed between them.

An excellent report of the impressive service, and of the admirable address delivered by the Rector of St. Lawrence Jewry, was contained in the *City Press* of November 26, 1902, and is well worth recording here. It spoke thus :—

Simultaneously with the interment, a memorial service was held at the church of St. Lawrence Jewry. Amongst those present were : Mr. Julian Hill and Mrs. Hill (sister of the late Judge), his Honour Judge Lumley Smith, K.C., Mr. G. Pitt-Lewis, K.C. (who sat as the late Judge's deputy for some years), Alderman Sir H. D. Davies, M.P., Mr. Alderman Alliston, Sir Homewood Crawford (City Solicitor), Mr. W. H. Thomas, C.C., Mr. Myer B. Lee, Mr. A. M. Sly, Mr. E. B. Tattershall (Assistant Registrar of the City of London Court), Mr. G. J. Mitchell (Clerk of the Judge's Court), Mr. G. Cooper (the Superintending Clerk), Mr. Maynard, Mr. Mattison, Mr. Taylor, Mr. Phillips, Mr. Claridge, Mr. Mordin, Mr. Marnham, Mr. Rowe, Mr. J. Murdoch, Mr. Gyatt, Mr. Lynden, Mr. Bonus, Mr. Ford, and Mr. H. A. Grover (the official shorthand-writer). The legal profession practising at the Court was represented by Mr. J. J. Cooper Wyld, Mr. Mallinson, Mr. J. H. Welfare, and Mr. T. H. Aldous. After an appropriate funeral hymn had been sung, the Rev. J. Stephen Barrass, the rector, read a portion of the Burial Service. Addressing the congregation, he said : We have met together upon a solemn occasion. Life is full of solemnity. Death has taken from us one who for well towards half a century (forty-two years, to be exact) has played a prominent part in the administration of justice in the City of London. Robert Malcolm Kerr was no ordinary individual. As a man he was characterised by plain, straightforward, and blunt honesty. He was well read, thoughtful, and deeply religious. He was genial withal, and gifted with a deep vein of pawky Scottish humour, which made him at all times one of the most charming companions. As a Judge he will long be remembered. In his administration of justice he showed both deep learning and profound practical wisdom. He was ever impatient of red-tape. For legal fictions he had no mercy. The hampering technicalities of the law were

Commissioner Kerr

never allowed to thwart his purpose, or warp his judgment. He had the gift of grasping the real point at issue, and to that he would bring the litigants almost at the point of the bayonet. He dealt out justice with a strong hand, a firm will, and a clear conscience. He was not to be hoodwinked by the insinuating innocence of the Dodson and Fogg's, or cajoled by the high falutin oratory of the lineal descendants of Serjeant Buzfuz in the legal profession. To all honest lawyers he was ever courteous and most scrupulously fair. In that Court in which he sat for forty-two years he was known, feared, and loved as a strong man. He was no respecter of persons, but was always a good friend to the poor. He had the happy knack of saying smart and crystallising things. His *obiter dicta* in this respect would make a rare volume of proverbial philosophy. The world is all the richer for the lives of such men, and in these days of respectable mediocrity we are the more indebted for the great and good life lived among us. He has gone to stand before his Judge—the Judge before whom we must all go. Grant that we may so live that when we appear we may earn the "Well done, good and faithful servant, enter thou into the joy of thy Lord." The playing of Chopin's Funeral March by Mr. Kingdon brought the service to a close.

Appreciations, at once so ample and so accurate as those set out above, leave little to be added, even by one who had known the late Commissioner Kerr well for over thirty years, and had stood towards him in relationships which often lead to friction between men who have no sympathy of feeling with each other, because, each failing to understand the other, each suspects the other of a wish to treat him with less than justice. During the mid-career of the Commissioner the writer had for many years been his Tenant in Chambers. During its closing years, he long acted as his Deputy. Never during the whole period did there arise between them the smallest misunderstanding or friction, at any time or on any

Summary of Work and Character

subject. The credit for this is by no means wholly due to the younger man, though he had early, and as a very young man, learnt to value the kindness with which the late Commissioner regarded a very Junior Barrister, almost friendless in London, and with his way in the world to make, and the assistance which he was ever ready to render him in a thousand little ways. He had learnt, too, to trust with the most entire confidence in his absolute sense of justice, and to know that, if he at times appeared harsh or even brusque, he was actuated by a stern sense of his duty to treat all men with unbending and impartial justice.

The shrewd observation made by Judge Rentoul is the more remarkable because that Judge did not personally know the subject of his criticism. Yet he spoke the exact truth when he said that the Commissioner "sometimes carried his very virtues to excess." This was especially true of his work in Court. As Lord Brampton in his kind letter truly said, he was for years doing the work of two men, and the pressure of business before him often absolutely necessitated the exercise by him of that wonderful faculty which he possessed of characteristically grasping "the point" of a case long before an ordinary mind had even seized on what were the material facts in their due order. Yet it cannot be denied that this very faculty at times led the Commissioner to forget or to ignore the great principle promulgated by Bentham, whose disciple and follower he, in his main views, was. That great jurist declared paradoxically, "That justice should *seem* to be done, is better even than that it should be actually done." That it almost

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always was actually done in Kerr's Court, and that in a far higher percentage of cases than in Courts presided over by painstaking men far less rapid in their methods, many years' observation enables the writer to be very confident. That it always *seemed* to be done cannot be affirmed, alas! The observation that his acts were not always what they seemed may be justly extended to the Commissioner's whole life. Sternly resolved to obtain that strict justice which was his ideal, whether he was seeking it for others or for himself, he rushed towards its attainment with an impetuosity that often did injustice to himself and to his really kindly nature, and in a manner which sometimes rendered him not sufficiently thoughtful of the feelings of other and weaker men. Intentionally, he would hurt the feelings of no man; in his anxiety to reach the justice which was ever his aim, he would sometimes thoughtlessly trample on the feelings of those whom he believed to be standing in the way of its attainment.

"Be just and fear not" was, in truth, the aim of his long life. Rightly was it said by Mr. Barrass, the Rector of St. Lawrence Jewry, that he was "well read, thoughtful, and deeply religious," and that "he dealt out justice with a strong hand, a firm will, and a clear conscience." Ever mindful of the end of all human life, he always tried to keep steadily before his mind, alike on the judgment seat, and throughout life, as he did before his eyes at the desk where he was, when out of Court, largely occupied with his pen, the motto—

"Pensez toujours à la fin."

APPENDICES

APPENDIX A

JUDGE'S SALARY AND JUDGE'S FEES RECEIVED BY THE CORPORATION IN EACH YEAR

JUDGE'S SALARY.		JUDGE'S FEES.	
	£		£
1859	450 (estimated)	969	(estimated)
1860	900	2,005	} Estimated as various fees abolished in 1860.
1861	900	2,376	
1862	900	2,449	
1863	900	2,379	
1864	900	2,376	
1865	975	2,200	} Estimated as various fees abolished in 1860.
1866	1,200	2,378	
1867	1,200	2,607	
1868	1,800	3,737	
1869	2,000	4,550	
1870	2,000	3,664	
1871	2,000	3,665	
1872	2,000	3,639	
1873	2,000	3,694	
1874	2,100	4,003	
1875	2,100	4,869	
1876	2,100	5,706	
1877	2,100	5,390	
1878	2,100	5,883	
1879	2,100	6,421	
1880	2,100	6,553	
1881	2,100	6,673	
1882	2,100	6,579	
1883	2,100	6,525	
1884	2,100	6,755	

Appendix A

JUDGE'S SALARY.		JUDGE'S FEES.	
	£		£
1885	2,100		7,121
1886	2,450		6,624
1887	2,700		6,794
1888	2,700		6,647
1889	2,700		7,048
1890	3,200		7,751
1891	3,200		8,576
1892	3,200		9,286
1893	3,200		9,708
1894	3,200		10,837
1895	3,200		10,301
¹ 1896	3,200	} In each of these years £3,200 profit made by the Corporation.*	
¹ 1897	3,200		
¹ 1898	3,200		
¹ 1899	3,200		
¹ 1900	3,200		

¹ *N.B.*—The figures for these years are not contained in the original return, but have been added by the late Commissioner Kerr, in his own hand, to his copy of such return.—ED.

* A note to this effect, in the late Commissioner's own hand, is contained in his copy of this return.—ED.

APPENDIX B

TOTAL SUITORS' FEES LEVIED IN EACH YEAR, AND ANNUAL INCREASES THEREON

1889 TO 1894.

	NO. OF ACTIONS.	AMOUNT SUED FOR.	FEES LEVIED.	INCREASE OVER 1889.
		£	£	
1889	18,285	150,838	14,839	—
1890	29,197	160,625	16,319	1,480
1891	31,792	184,577	18,055	3,216
1892	32,382	197,343	19,551	4,712
1893	34,880	201,881	20,439	5,600
1894	38,680	221,271	22,814	7,975
1895	39,127	219,758	21,687	6,848
1896			19,917	
1897			19,292	
1898			19,670	
1899			18,879	
1900			18,758	

The figures from 1895 given here are given as corrected by the late Commissioner Kerr in his own hand to his copy of it.

The figures for these years have been added, and subsequently corrected in his own hand, by the late Commissioner in his copy of his return.

As to the fees of the Court previously to the date at which this return is commenced, the following is contained in the *City Press*, June 27, 1868:—

“The total sum levied as Court Fees from the suitors was, in the first year, £4,146; the amount of fees levied in the last year, exclusive of Equity fees, but including the fees of the new jurisdiction since 1st January last, was £6,148. Of these fees the proportion to

Appendix B

which the Judge would be entitled, were he not paid by a salary, was in the first year £1,214, and in the last year £1,935."

The return was "for the first nine years during which the present Judge has held office." It was remarked that "these facts and figures speak for themselves."

APPENDIX C

THE REGULATIONS WHICH GOVERNED CLIFFORD'S INN

These are the Statutes and Ordinances for the good and honourable government of the . . . and in the Chancell or lane made to be held and kept . . . Clyffordes Inne the . . . year of the reign of King Henry the Seventh in the time of . . . Holland then the Principal, and . . . newly written in the twentieth year of King Henry the Eighth, Hugh Goodman serjeant Principal.

1. First, it is ordained and established that each companion who enters therein to dwell there shall pay at his first entry 40d. for his gaudes and for his reception, to the Principal.

2. Also, it is ordained and established that each companion who departed out of the town and is in arrear of any whole commons, half-commons, battels, repasts, forfeitures, or any other duties, and has not any other companion held to make settlement for him with the said Steward or the Principal on the Saturday for the accompts of the said duties thus in arrear, shall pay fine before that he enters in arrear in the commons or pension, that is to say, for the first time, 6d. in addition to the said duties, and for the second time, 12d., and for the third time, 40d., and then he shall be thrust and put out of the commons, company and pension roll for ever, provided always that his goods and chattels being within the said Hostal be first of all distrained and retained until the said duties be fully paid.

3. Also, It is ordained and established that each Steward shall fully pay to the Principal for penalty and service on the next following [blank] or on the Monday at the Meal at latest after his week under penalty of 6s. 8d. to be paid at the choice of the Company. And, further, he shall be answerable for each whole commoner and half-commoner, who is in arrears of the whole commons or half-

Appendix C

commons, unless he have them and their names read openly bound and shewn at the accompts for the common profit, And also he shall be answerable for the arrear commons, battels and all manner of forfeitures lost, unless he has duly laid before the Principal the book of his accompts the said morrow before . . . or Monday before noon at the latest, together with the names of those who are thus in arrear.

4. Also the said Steward shall keep for his time all the cloths, linens of the buttery, hampers, salts and other things necessary to the said buttery appertaining, and surrender them to the next Steward on the Saturday next after his accompt, so safely as he received them, under penalty

*The keeping
of the cloths and
linen of the
Buttery.*

of paying double value to the use of the Company for each thing by his default or negligence lost or impaired. And if any default be found in any Steward or his deputy in the ordering of the victuals, concealment of the common profits of the statutes and ordinances of the said hostel openly broken or any other thing whatever, or that he be more favourable in service to one companion than to another, or incurs any waste against the common profit, he shall pay to the said Company 6d. ; and further, if it appears right, by the advice of the Principal and those of his council. And also,

*For closing of
the Gates.*

he shall be held to close the gates, that is to say—in summer between nine and ten, and in winter at nine o'clock in the night under penalty of paying to the use of the Company 6d. for each default that he commits. And also it is ordained that the Company be at meal (dinner) in time of harm at twelve o'clock, and at eleven o'clock in the vacation, and at supper always at six o'clock.

5. Also it is ordained that every companion who delays and stops the cloth on the table at the dinner or supper aforesaid or at the supper with the Steward each time shall pay a farthing And if he comes to the dinner or supper after the Steward has duly dined or supped he shall pay each time 1d.

*For delaying of
the cloth.*

6. Also, it is ordained that each companion of the said hostel, as well he who is not assigned to any chamber therein, as he who is assigned to certain chamber therein, shall be Steward for all the Company according to the coming of his turn, provided always that he may be excused for 12d. to be paid to the use of the Company, if he will.

*Who shall be
Steward.*

Regulations Governing Clifford's Inn

7. Also, it is ordained that if any companion of the said hostel be in the Steward's book on the Saturday for buttals or for a farthing's forfeit he shall be charged a halfpenny, without any reward (return) thereof to be had afterwards of the said Company, etc.

8. Also if any companion make a disturbance in time of the "der tyme" to wit, of grace, of examination of briefs, declaration of the aptur, or court baron, or bring any stranger to the hatch of the buttary in the time of the dinner or supper for drinking, he shall pay each time, 6d.

9. Also, it is ordained that all those who enter into the aforesaid hostel with intention of valuing it (?) according to the custom, and afterwards occupy themselves with divers other occupations, not honorable nor in accordance with the good government, but plainly to the injury of the said hostel, be utterly voided and put out of it.

10. Also, it is ordained and established that from henceforth no companion shall be received to remain within that hostel without he shall first of all find two sufficient companions of the same hostel to answer for all his duties if any thereof from henceforth be in arrest therein.

11. Also, whatever companion talks . . . or ribaldry with good deliberation and intention within the Hall at the time of the dinner or of the support, he shall pay for each word one farthing, et cetera.

12. Also, it is ordained and established by the Principal and his council, that any companion of the said hostel, to wit, of the pension of three shillings yearly, being of the said Company by the space of one year at least, shall bear all the scholarships of this hostel for his proper turn.

13. Also, it is ordained and established, that if any companion enters into () chamber and does anything or says anything therein whereby those of the chamber be in any (way) disturbed by him who thus enters, he shall pay each time one penny. And also that no companion be (allowed) to be lodged in any chamber except by the assignment of the Principal.

14. Also, it is ordained that if any companion make or disturb the cloth within the said hostel with any of his companions, he shall pay for each time sixpence. And if he fight with fist or cudgel,

Appendix C

knife or dagger or any other thing without effusion of blood, he shall pay each time twelve pence, and shall make amends to the party by the discretion of the Principal, &c., and shall pay to the Company six shillings and eightpence, and forthwith leave the hostel.

15. Also, it is ordained and agreed that each companion of the said hostel who (carries) procures and takes any other companion of the same hostel to go with him out of the said hostel to help him to avenge himself upon any strange man or companion of the said hostel, for any old or new disagreement, malice, and contention between them pending, shall pay to the use of the Company six shillings and eightpence And he thus wantonly consents to go with him in the manner above said shall pay forty pence. And the one as well as the other shall forthwith leave the hostel.

That no one
procure any
companion to
go with him to
make conten-
tion.

16. Also, it is agreed that each Steward of the said hostel for the time being shall enter and write in his book all the defaults and errors made and committed by any companion of that hostel against the statutes and ordinances thereof (while) he is Steward, and also shall write all the names of those companions who cause the gates or gate of the said hostel to be opened, after that they are duly . . . closed and locked, so that on the Wednesday night the Principal and all the Company may be openly apprised and informed of the same defaults, errors, and names, to be (rightly) adjudged according to the custom of the said hostel under penalty of twelve pence to be paid by the said Steward to the said Company as soon afterwards as they are perceived and known.

That the Steward
shall present
all defaults.

17. Also, it is ordained that each companion of the said hostel shall pay to the said Principal thirteen pence for vessels of pewter And also that he have in the kitchen (?) one plate and one saucer of pewter, ready for his use every day under penalty of one farthing to be paid at the will of the Company . . . every day that he is in arrear.

What one shall
pay for vessels.

18. Also it is ordained that each companion who breaks or causes to be opened by design or . . . the hatch of the Buttery against the will of the Steward for the time being, shall pay the first time at the will of the Company twelve pence, and on the second time two shillings, and on the third time forty pence and forthwith leave the hostel.

For breaking
the hatch of
the Buttery.

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For opening
of the great
gate. 19. Also that the penalty be levied on those who break the great gate or (cause it to be opened) against the form of the Statutes thereof made, etc.

20. Also it is provided and agreed by the advice of all the council of the same hostel . . . assembled on the feast of St. Martin in the tenth year of Edward the Fourth

For election
of the Marshall. . . . after the feast of Christmas then next ensuing

for ever thereafter that if any companion of the same hostel be elected to the office of the marshal constable or steward . . . Christmas, and refuses that office and will not take it upon himself but utterly refuses it he shall be fined in the sum of twenty shillings And also that all the companions of the same hostel, commoners or non-commoners, excepting those who are of the great council of the same hostel, being in town at the time of the election of the said officers, upon due warning by the Principal, one under his commands, to them made, are held to be liable to the said offices according to the discretion of the Principal and those of his council, and chargeable to the said offices under penalty aforesaid.

21. Also, whosoever misbehaves himself out of the said hostel in any wise . . . the said hostel is disgracefully scandalised, he shall

For scandalising
of the hostel
or . . . any
common
woman.

pay for the first time to the use of the said Company forty pence and forthwith leave the hostel, until he has permission of the Principal and all the said Company to return thither And on the second time he shall pay in the same manner six shillings and eight pence, and forthwith leave the said hostel for ever And also (if) any companion shall either carry in or . . . therein any common woman and woman of ill fame he shall pay for each time . . . to the company six shillings and eight pence, and on the third time he shall leave the hostel for ever. . . . Conveyers in or out, or be in company or knowledge thereof, and do not show or discover them to the Principal and council of the said hostel have the same penalty, etc.

22. Also, it is established and ordained by the Principal and his council that each companion of the said hostel to wit as well of the common pension as of the pension of "half a mark," being in the City and . . . St. Pauls and Temple Bar shall be in commons except reasonable and necessary cause . . . deputy or his council.

23. Also it is ordained and established that if any companion of the said hostel play at tennis, or dice tables, cards, or pique, or

Appendix C

tables, or grates, or other metal or quoits or other unsuitable game therein or without privy or openly in any time of the year or in time of Christmas or Candlemas without the permission of the Principal and all of his council, he shall pay for the first time to the use of the said Company twelve pence, and for the second time forty pence, and the third time six shillings and eight pence, and forthwith leave the hostel for ever Provided always that the game of tables for the amusement of the companions in an honest manner and suitable time may be used, so that no gain of gold nor silver or other thing of the value of one farthing, privily or openly by device or deceit be thereof taken in any manner under the penalty above said.

24. Also, it is ordained that the game called "Newefaire" be not used within the said hostel under penalty of forfeiture of the thing thus put in the said game or the value thereof to the use of the Company, etc.

25. Also whereas the said hostel is greatly scandalised and the Principal and many companions thereof have been shamefully reproved for many various things and profits of divers companions privily put in mortgage and sometimes by subtlety and wicked deceit lost or sold to certain companions of the said hostel to the great damage of the parents and friends of the said companions thus putting their profit into mortgage, It is ordained and established that from henceforth if any such thing or profit of any companion of the said hostel be put into mortgage to another companion of the same hostel or any other man or woman by covin or deceit in his name for his use and profit upon a certain day that within two days after the said day appointed and returned he who has the said thing or profit is to come to the Principal of the said hostel and declare openly how and in what manner the said thing or profit was delivered to them, and then remain at the ordinance of the said Principal and those of his council upon penalty of the forfeiture of the thing or profit put in Mortgage or the value thereof.

26. Also, it is ordained and agreed that if any companion of the said hostel who lends to another companion of the same hostel gold or silver (and) thereof takes usury for advantage of that loan, for the first time he shall pay to the use of the said Company the said advantage thus by usury

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acquired and on the second time three times the value and forthwith leave the hostel And if anything or profit by any companion of the said hostel be privily by fraud or wicked device sold within the said hostel or without to another companion of the same hostel, it is agreed that the aforesaid sale and purchase be not so affirmed and established, but that it shall be replaced and restored back again to the party by the ordinances of the said Principal and those of his council, if he who had thus sold it, or his friends will therefor make plaint and demand remedy afterwards, upon penalty of leaving the hostel to be laid upon him who openly refuses to do so.

27. Also, it is ordained that if any companion of the said hostel receive retain or bring within the said hostel any dog called greyhound, greybitch, spaniel, or mastiff, he shall pay for the first time to the Company forty pence, and on the second time six shillings and eight pence and forthwith leave the hostel.

For keeping
of Greyhound.

28. Also if any companion draw within the said hostel any knife dagger or sword by way of cutting or playing or if he write upon the tables in the Hall he shall pay each time one penny to the Company, etc.

That no one
bring a knife.

29. Also it is ordained and agreed that if any companion of the said hostel do damage in the gardens or take herbage or fruit away therefrom, or if he take privily or openly fruit growing therein, without permission of the Principal abovesaid, and assent of all the company, he shall pay for the first time six pence, the second time twelve pence, the third time twenty pence, the fourth time forty pence.

That no one
do damage in
the gardens.

30. Also if any companion of the said hostel be often accustomed to go forth from the said hostel after nine of the clock of the night or returning thither after that time that the gates be duly shut and locked and this in continuance for many weeks he shall pay for the first time twelve pence, for the second time forty pence, and forthwith leave the hostel.

For shutting
the gates.

31. Also, each pensioner shall pay his pension in the week after that the pension be set upon penalty of six pence beyond the pension to be paid at the will of the said Company.

For payment
of the pension.

32. Also it is ordained and agreed that each companion of the said hostel who has promised the Principal and undertaken upon his entry to be governed according to the ordinance of the said

Appendix C

Principal and the effect and form of the statutes and customs of the said hostel for the time that he be therein, and afterwards set himself to disagree with the said undertaking and be rebellious against the ordinance of the said Principal and those of his council, or against the said statutes and ordinances, nor will undertake to perform that which forthwith may be made parcel thereof, leave the hostel, provided always that his profits be first seized and held until all his duties and forfeitures be fully paid if any be in arrear.

That no one
be disobedient
to the Statute.

33. Also, it is agreed that henceforth each companion of the said hostel, who frequently or customarily brings to the hatch of the buttery any stranger man or companion not a commoner, to drink at the time of the learning in the hall, or if he causes the steward to open the said hatch in any other time not reasonable, shall pay each time for each hanap (*i.e.*, flagon) two pence, and more if it seems good to the steward.

34. Also it is ordained by all the council of the said hostel that if any one of the said hostel have any contrary words with the Principal or his deputy or any companion sitting at the comptor or in any other place within the said hostel, that then it shall be lawful for the Principal or his deputy and his counsel then being present to put such companion out of the commons and pension, if he please, and . . . the said offender be fined according to the discretion of the Principal or his deputy and his council.

35. Also it is ordained and agreed that from henceforth each companion of the said hostel being at their meals, to wit dinners or suppers in any half week of the year shall be accompted the Saturday at the accompter full commoner at the least and come to their repasts And this at the choice of the Principal and his Company for each time being. And also that each companion of the same hostel being out of commons and staying and lying within the view or in the town of London or the suburbs thereof for the space of two days more shall be accompted and reckoned on the Saturday then next following at the accompts half commoner at the least by the discretion of the Principal and those of his council And if common pensioner be two nights and noble pensioner three nights in the said hostel he shall be half commoner.

Who shall be in
commons.

36. Also it is agreed and established that no companion of the said hostel receive any person to be lodged in his chambers who has

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been put out of the said hostel by the Principal or those of his council. And if any one do this he shall pay to the use of the Company six shillings and eight pence, and forthwith leave the hostel, And also that no companion of the said hostel who is put out of the commons once, be lodged within the said hostel until he has permission of the Principal and those of his council for his return thither under penalty for each night twelve pence to be paid to the use of the Company before his return to the hostel.

That one put out of the hostel shall not be lodged therein.

37. Also, it is ordained that no companion of the said hostel ought to make any construction or argument of the said rules or any of them or any point contrary to the Principal and his council, nor disturbance or contradiction of the good rule or ordinances of the said hostel, whereby any companion presumes to be of ill government by means of the said construction in any point, under penalty of three shillings and four pence; but the construction of the said statutes shall be always referred to the said Principal and those of his council.

That no companion ought to make any construction of these statutes.

38. Also, it is ordained that no companion of this hostel shall do any damage nor cause any other one to do damage by any manner of way to the rules and statutes before said in any point nor remove the said rules under penalty for each default of six shillings and eight pence.

For those who do damage to this Table.

39. Also, it is agreed and ordained that no companion of that hostel imagine or compass the deposition or the removal of the Principal or of the reader of the same hostel without the assent of those of the council of the said hostel under penalty of leaving the said hostel for ever And if after such deposition any election be made without the assent of those of the said council that all these elections be utterly void and held for nought And also that each companion of the same hostel who in any manner abets, procures, aids, or assists the same offences before said incurs the same penalty.

40. Also, it is provided and agreed that if any common pensioner being in commons and lying in the same hostel, be absent from a reading of writ, he shall lose one farthing, and a lecture one halfpenny to the use of the company. And also if any scholarship (?) to wit, with reading motion, or report be lost by their default, he who is in default shall pay for a writ sixpence, for a motion in term time twenty pence, for a report

The aid for learning.

Appendix C

sixpence, and for a motion in vacation time three shillings and four pence. And all the forfeitures shall be to the use of the Company, etc.

41. Also, it is provided and agreed that no companion of that hostel nor any stranger play at any game, to wit, dice, tables, or cards, within that same hostel at Christmas time, nor without, under penalty of each companion acting against this regulation forfeiting for each time thus offending six shillings and eight pence at the will of the same hostel.

42. Also, it is agreed that if any companion of that hostel rebel against this ordinance or absent himself from the commons for that cause, that the Principal admonish him out of the commons.

43. Also, it is agreed that at Christmas time the Steward at the end of each week as at other times of the year shall be changed.

44. Also, it is provided that each companion who shall be admitted within the said hostel, as well those who shall be admitted by the name of the common pensioner as those by the name of the noble pensioner, be held to be present and in commons on the two feasts of Christmas next after their admittance, under penalty of six and eight pence for each one of the said feasts which is not thus observed, etc.

45. Also, he who is once received for commoner shall be always called commoner if he be in town until he is duly warned of the

The definition of commoner. Steward for the time being, or of the Principal, of his leave, and if he depart out of town without due warning he shall be (charged for) two repasts after the time that he departs out of time, and shall pay, that is to say for each repast according to the demand of the time whether it be feast day or week day.

46. Also, it is agreed by the Principal and the common council of the same hostel (that he) who is of common pension and has been admitted thereunto for the space of half a year from that day forward, be charged for his (last) course to undertake all manner of learning of the same hostel which belong to the Inner Barrister without any requisition of the Principal for him to do so to charge any other companion. And that such companion aforesaid who belongs to the company of the said hostel and has been admitted thereunto for one year and one day forward be also charged for his (last) course to undertake all manner of learnings of the said hostel which belong to he Uiter Barrister without any requisition of the Principal for him

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to do so to charge any other companion, under penalties contained within the statutes of the said hostel. It is always provided that each companion above said be at liberty to and appoint his deputy.

And also it is provided that no companion of the same hostel of his (last) presume to undertake any learning within the same hostel as Utter Barrister for any of his companions without assignment and admission of the Principal except only for his (last) course, etc.

47. Also, it is agreed by the Principal and all the Council of the said hostel that whatever companion of the said hostel draws any weapon upon any companion or on the chief cook or under cook in malice within the same hostel shall forthwith be put out of commons of the said hostel, etc.

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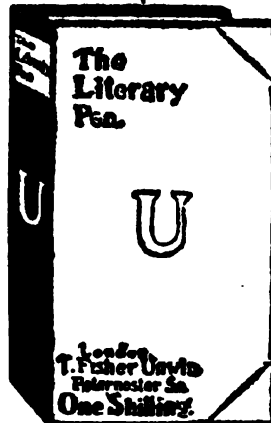
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